

**CHAITMAN LLP**

465 Park Avenue  
New York, New York 10022  
Phone & Fax: (888) 759-1114  
Helen Davis Chaitman  
Gregory M. Dexter  
[hchaitman@chaitmanllp.com](mailto:hchaitman@chaitmanllp.com)  
[gdexter@chaitmanllp.com](mailto:gdexter@chaitmanllp.com)

*Attorneys for Defendants-Appellants*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION  
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation  
of Bernard L. Madoff Investment Securities LLC,

Plaintiff,

v.

DEFENDANTS LISTED ON ECF No. 14283,

Defendants-Appellants.

SIPA LIQUIDATION

(Substantively Consolidated)

Adv. Pro. No. 08-1789 (SMB)

Adv. Pro. Nos. listed on ECF No.  
14283.

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**Baker & Hostetler LLP**

45 Rockefeller Plaza  
New York, NY 10111

T 212.589.4200  
F 212.589.4201  
www.bakerlaw.com

January 22, 2019

**VIA ECF AND ELECTRONIC MAIL**

Honorable Stuart M. Bernstein  
United States Bankruptcy Court  
Southern District of New York  
One Bowling Green, Room 723  
New York, New York 10004-1408  
Bernstein.chambers@nysb.uscourts.gov

*Re: Picard v. Wilenitz*, Adv. Pro. No. 10-04995 (SMB)

Dear Judge Bernstein:

We are counsel to Irving H. Picard, as trustee (“Trustee”) for the substantively consolidated liquidation of Bernard L. Madoff Investment Securities LLC (“BLMIS”) under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa, *et seq.* and the estate of Bernard L. Madoff. We write in response to Ms. Chaitman’s January 16, 2019 letter and accompanying declaration requesting permission to appeal Judge Maas’s January 2, 2019 Order (the “January 2019 Order”).<sup>1</sup>

The Court should decline to review the January 2019 Order and thereby provide finality to this longstanding discovery dispute. *See* Order Appointing a Discovery Arbitrator, ECF No. 14227, Adv. Pro. No. 08-01789 (providing that Discovery Arbitrator’s rulings are reviewed “at the discretion of the Court”). As the Court is aware, Ms. Chaitman has litigated her request for “trading records” multiple times and in multiple contexts. Since the parties originally agreed to arbitrate this dispute in 2016, Ms. Chaitman has filed three motions before Judge Maas resulting in three separate orders governing the “trading records” issue—two of which denying Ms. Chaitman’s renewed motions to compel additional documents. In the interim, after Judge Maas denied her second motion, Ms. Chaitman separately (and improperly) raised the dispute multiple times before this Court. Over the course of nearly three years, the Trustee has produced over 300,000 documents totaling 4.8 million pages, including the restoration of over 200 microfilm reels and the application of approximately 250 search terms across the same BLMIS Database to

<sup>1</sup> The complete transcript from the November 19, 2018 arbitration before Judge Maas is attached as Exhibit A.

which Ms. Chaitman now seeks wholesale access. These productions supplemented the four million documents provided in E-Data Room 1, including approximately 260,000 third-party financial records that have been available to Ms. Chaitman since before she served her first request for production of documents.

In denying Ms. Chaitman's renewed motion to compel for the second consecutive time, Judge Maas carefully considered this entire record and rejected the same arguments and accusations Ms. Chaitman has lodged repeatedly for years (and lodges again here). Specifically, Judge Maas concluded that: (i) "the Trustee has repeatedly tried to accommodate Ms. Chaitman's requests for BLMIS trading records"; (ii) Ms. Chaitman's "assertion that the Trustee has proceeded in bad faith is utterly unsupported by the record"; and (iii) "there is no basis for requiring the Trustee to supplement the extensive efforts that he has already undertaken." January 2019 Order at 5-7, Chaitman Decl. Ex. 1. Given Judge Maas's familiarity with the underlying record, as well as the Court's own experience with this dispute over the years, there is no reason to second-guess Judge Maas's findings.

Nor is there any basis to sanction what would essentially amount to an interlocutory appeal of a discovery order, which federal law does not permit. *See* 28 U.S.C. §1292 (articulating standard for appealing interlocutory orders). In fact, Ms. Chaitman's attempt in a separate adversary proceeding to certify for appeal a discovery order entered by this Court was rejected by Judge Carter. *See* Order Denying Motion for Leave to Appeal, *Picard v. Saren-Lawrence*, Adv. Pro. No. 10-04898, ECF No. 118, at 8 (denying motion because "reversal of the Bankruptcy Court's discovery ruling would not materially advance the termination of the Trustee's efforts to recover the fictitious transfers made by Madoff" and the "discovery ruling does not contain a controlling legal issue"); *see also* *Tylena M. v. Heartshare Children's Services*, 220 F.R.D. 38, 39 (S.D.N.Y. 2004) (according "the substantial deference due to a magistrate judge's resolution of discovery disputes" and concluding that ruling was not "clearly erroneous or contrary to law"). The same principles should guide the Court here. Ms. Chaitman has already taken multiple bites of this apple, and she should not be afforded *de novo* review of Judge Maas's third "trading records" related order merely because the parties elected to arbitrate the dispute. Indeed, this Court's review of the January 2019 Order would defeat the purpose of referring the dispute to Judge Maas in the first place.

In any event, even if the Court were to grant appellate review, Ms. Chaitman's four principal arguments on appeal are a collection of irrelevant distractions that would not warrant reversal. *First*, Ms. Chaitman's assertion that the Court had already "ordered" the Trustee to produce the trading records is both false and inconsequential. On May 16, 2016, the Court held a pre-motion conference pursuant to Local Bankruptcy Rule 7007 and authorized Ms. Chaitman to file a motion to compel, which she eventually filed on August 29, 2016. After fully briefing the motion in this Court, the parties referred the dispute to Judge Maas, who subsequently issued the three orders referenced above. If the Court had already ordered production of "trading records" in May of 2016, then Ms. Chaitman's August 2016 motion to compel and subsequent arbitrations would have been completely unnecessary. Regardless, in the January 2019 Order, Judge Maas validated the Trustee's extensive productions and implicitly concluded that the Trustee has

complied with all applicable orders. As such, even if Ms. Chaitman's characterization of the May 16, 2016 conference is correct (which it is not), it would not provide a basis to disturb Judge Maas's ruling.

*Second*, given Ms. Chaitman's expansive request for over 30 million documents, the question of whether it would be burdensome for the Trustee to produce these materials is inapposite. The threshold inquiry regarding the scope of discovery is not whether the production would be burdensome; it is whether the discovery is relevant and proportional. *See* Fed. R. Civ. P. 26(b)(1). A mere showing that a production would not be burdensome to a producing party does not entitle litigants to irrelevant and disproportional discovery. On its face, Ms. Chaitman's request for the wholesale production of 30 million documents falls well outside the scope of Fed. R. Civ. P. 26, and Judge Maas expressly concluded that the efforts undertaken by the Trustee to identify and produce actual "trading records" through various search terms and microfilm restorations were "extensive." *See* January 2019 Order at 7.<sup>2</sup> Accordingly, there is no basis to compel the production of 30 million additional documents, irrespective of burden considerations.

*Third*, Judge Maas's conclusion that Ms. Chaitman has failed to show that any of BLMIS's legitimate trading activity was done for the benefit of investment advisory customers, while true, was similarly not integral to Judge Maas's ultimate denial of Ms. Chaitman's motion. *See* January 2019 Order at 7. Judge Maas expressly stated that, "*even if [real trading] were proven*, there [has] been no showing that the efforts that the Trustee already has undertaken in an effort to locate pre-1992 BLMIS trading records are inadequate." *Id.* (emphasis added). A contrary finding on appeal regarding any real trading at BLMIS would therefore not warrant a different result on the merits of this dispute.

*Fourth*, Judge Maas did not "fail to consider" that Ms. Chaitman requested access to the Queens warehouse; he expressly concluded that Ms. Chaitman had not "demonstrated that the warehouse is likely to contain any documents that would be of use to her . . . ." January 2019 Order at 6. Given Ms. Chaitman's failure to make this showing, Judge Maas correctly concluded that there was no basis to compel the Trustee to search the materials in the warehouse or permit Ms. Chaitman to review those same materials herself. As further elaborated by Judge Maas:

[Ms. Chaitman] has known for years that the BLMIS Database contains approximately 30 million documents, only a fraction of which have been copied to E-Data Room 1, and that the Trustee has thousands of boxes of hard copy documents and thousands of items

<sup>2</sup> Ms. Chaitman falsely states that she "provided the Trustee with a list of all known firms with which Madoff/BLMIS traded or custodied securities," but that the Trustee "has never made a search of the records in his exclusive control to produce these documents." Letter at 6. As detailed in the January 2019 Order, the Trustee produced documents responsive to two of Ms. Chaitman's 22 broad search terms, which confirmed that the documents were largely irrelevant. At a subsequent meet and confer, the parties agreed to use specific account numbers as search terms in lieu of bank names, and the Trustee produced approximately 10,000 documents responsive to those search terms. *See* January 2019 Order at 5.

of electronic media that have not been processed. In fact, she has been given indices confirming the existence of these additional materials.

*See* January 2019 Order at 5-6. Judge Maas therefore recognized that Ms. Chaitman has had meaningful access to the materials in the warehouse for years and that her last-ditch effort to prolong this dispute by offering to visit the warehouse herself rang hollow.

In fact, in his March 15, 2017 order denying Ms. Chaitman's second motion to compel, Judge Maas concluded that the indices produced by the Trustee in December of 2016 "should have enabled Ms. Chaitman to formulate more focused requests for trading records." *See* January 2019 Order at 4. Despite Judge Maas's directives, Ms. Chaitman never consulted these indices and only made the warehouse an issue *after* the November 19, 2018 arbitration. Judge Maas himself took issue with this enlarged request in his Order, which he said was "based on a contorted view of the record." *See* January 2019 Order at 5 ("Also largely unexplained is why the application to be given access to this massive database morphed only one day later into a request that the Trustee wade through the 13,000 boxes of documents in the warehouse.")

Based on the foregoing, the Trustee respectfully requests that the Court decline any further review of Judge Maas's various orders and refuse any further indulgence of Ms. Chaitman's various accusations. Ms. Chaitman has had ample opportunity to pursue this discovery, and the Trustee has produced hundreds of thousands of documents in response to her requests. It is time for the Court to definitively put this dispute to rest and permit these cases to move forward unencumbered.

Respectfully submitted,

*/s/ Maximillian S. Shifrin*

Maximillian S. Shifrin

cc: Helen Davis Chaitman (via email)

## Exhibit A



Page 1

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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SECURITIES INVESTOR PROTECTION :  
CORPORATION, :

Adv. Pro. No.

: 08-01789(SMB)

Plaintiff-Applicant, :

: SIPA LIQUIDATION

v. :

: (Substantively  
Consolidated)

BERNARD L. MADOFF INVESTMENT  
SECURITIES, LLC, :

Defendant. :

-----X

In Re: :

BERNARD L. MADOFF, :

Debtor. :

-----X

IRVING H. PICARD, Trustee :  
for the Liquidation of :  
Bernard L. Madoff Investment :  
Securities LLC, :

Adv. Pro. No.

: 10-04995(SMB)

Plaintiff, :

v. :

TRUST U/ART FOURTH O/W/O ISRAEL  
WILENITZ, EVELYN BEREZIN :  
WILENITZ, individually, and as :  
Trustee and Beneficiary of the :  
Trust U/ART FOURTH O/W/O ISRAEL  
WILENITZ and SARA SEIMS, as :  
Trustee of the Trust U/Art  
Fourth O/W/O Israel Wilenitz, :

Defendants. :

-----X

CONFERENCE

Monday, November 19, 2018

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877.404.2193

AA207

1 TRANSCRIPT OF PROCEEDINGS as  
2 reported by NANCY C. BENDISH, Certified Court  
3 Reporter, RMR, CRR and Notary Public of the  
4 States of New York and New Jersey, at JAMS  
5 offices, 620 Eighth Avenue, 34th Floor, New  
6 York, New York on Monday, November 19, 2018,  
7 commencing at 10:23 a.m.

8

B E F O R E:

9

10 HON. FRANK MAAS (RET.), Arbitrator  
fmaas@jamsadr.com  
11 JAMS  
620 Eighth Avenue  
12 34th Floor  
New York, New York 10018

13

14 A P P E A R A N C E S:

15

BAKER HOSTETLER LLP  
16 45 Rockefeller Plaza  
14th Floor  
17 New York, New York 10111-0100  
BY: MAXIMILLIAN S. SHIFRIN, ESQ.  
18 mshifrin@bakerlaw.com  
NICHOLAS J. CREMONA, ESQ.  
19 ncremona@bakerlaw.com  
For the Trustee Irving Picard

20

21 CHAITMAN LLP  
465 Park Avenue  
22 New York, New York 10022  
BY: HELEN DAVIS CHAITMAN, ESQ.  
23 hchaitman@chaitmanllp.com  
GREGORY M. DEXTER, ESQ.  
24 gdexter@chaitmanllp.com  
For the Defendants

25

1 JUDGE MAAS: Good morning,  
2 everyone. We're here for Ms. Chaitman's motion  
3 seeking to compel the Trustee to share access to  
4 the entire database that the Trustee has  
5 assembled. So the floor is yours, Ms. Chaitman.

6 MS. CHAITMAN: Your Honor, as I  
7 laid out in our submission, we have been trying  
8 for over two years to get access to all the  
9 trading records, and we have not been able to do  
10 so. These records are absolutely essential for  
11 us to prove the defense that in fact Madoff was  
12 purchasing securities. And we have already  
13 established that we can prove it with respect to  
14 some, but without a complete set of the trading  
15 records it's impossible to do it.

16 So, what we really need is all the  
17 trading records going back as far as they have  
18 them. And just to be absolutely clear, we're  
19 talking about third-party documents; we're not  
20 talking about Madoff-generated documents. These  
21 are documents bearing the letterhead of Bank of  
22 New York Mellon, JPMorgan Chase, Fidelity,  
23 Lehman Brothers, Bear Stearns et cetera. So  
24 these are documents whose authenticity  
25 presumably cannot be questioned.

1 JUDGE MAAS: I thought one of the  
2 problems you faced with third-party documents is  
3 that they would only go back six years, and you  
4 were looking for records that went back further.  
5 My impression was that you were more interested  
6 in the opposite, the Madoff Securities records.  
7 But I understand that that's not what you're  
8 seeking.

9 MS. CHAITMAN: No. And even if we  
10 can only go back six years, Your Honor, and I  
11 think that that's -- the Trustee served  
12 subpoenas on all the institutions that did  
13 business with Madoff, as I understand it. And  
14 obviously he did that presumably in 2009. So if  
15 it went back six years, it would be to 2002 or  
16 '3. It's possible that Madoff kept records  
17 earlier than that. In other words, he might  
18 have had people who just microfilmed records  
19 from an earlier period.

20 So, I'm not interested in any  
21 records other than third-party trading records.  
22 But we haven't been able to get them. I mean,  
23 to take just one example, BNY Mellon, there are  
24 certain statements but only for the year 2008, I  
25 believe 2007 and '8, in the e-data room and

1 there's no indication that the earliest  
2 statement we have was the first statement.

3 So, at one point within the last  
4 six months the Trustee had offered all defense  
5 counsel access to the BLMIS database, which  
6 seemed to me the easiest and least burdensome  
7 way for the Trustee to comply with this request.

8 I don't know how anything in that database can  
9 be privileged from the Trustee's perspective.  
10 But if there's some way to segregate the trading  
11 records, that would be fine. It's just that the  
12 Trustee hasn't done that.

13 What the Trustee has done is given  
14 me specific limited productions, which don't  
15 really resolve the problem. I need to have  
16 access to a database of all of the third-party  
17 records.

18 MR. SHIFRIN: Your Honor, so  
19 there's a lot I can say in response to that. I  
20 think the first thing I think is worth  
21 emphasizing is that there is a history to this  
22 dispute.

23 JUDGE MAAS: Some of which I'm  
24 part of.

25 MR. SHIFRIN: Yes, exactly. And

1 we did our best to articulate with as much  
2 detail as possible in the two-and-a-half page  
3 submission the relevant history.

4 Everything contained in our  
5 portion of that joint statement is 100 percent  
6 accurate. I stand by every single word in that  
7 joint statement, and if that version of events  
8 is the accurate story, then a lot of what Ms.  
9 Chaitman wrote in her position, in her portion  
10 of the joint statement, cannot be. There's some  
11 conflict there. And I submit to you that our  
12 effort to build a comprehensive chronology there  
13 should speak for itself.

14 Now, I don't want to restate  
15 everything we wrote in our joint statement, but  
16 I just want to emphasize certain core realities  
17 here.

18 First, there is an order governing  
19 this dispute. It's the March 2017 order that  
20 Your Honor entered. It governs Ms. Chaitman's  
21 requests for any additional documents. The  
22 thrust of that order is that the Trustee has  
23 produced comprehensive indices detailing the  
24 BLMIS data in the Trustee's possession and that  
25 Ms. Chaitman, if she wanted any additional

1 documents, was to use those indices and  
2 specifically state what she wanted and where she  
3 thought those documents were located.

4 JUDGE MAAS: But one of the things  
5 she says is that she can't save the search, I  
6 think she said she can't print directly and,  
7 therefore, has to put in requests to the  
8 Trustee. It does seem a little unwieldy.

9 MR. SHIFRIN: Your Honor, I think  
10 Your Honor's question might be conflating the  
11 E-Data Room 1, which is a separate database --

12 JUDGE MAAS: Probably, right.

13 MR. SHIFRIN: -- and then the rest  
14 of our data. So that --

15 JUDGE MAAS: Let me -- and forgive  
16 me for interrupting. To the extent that Ms.  
17 Chaitman tells me now she's only interested in  
18 third-party records, those are not in the e-data  
19 room, or they are?

20 MR. SHIFRIN: There are many  
21 third-party documents in E-Data Room 1. But  
22 E-Data Room 1, the primary purpose of that  
23 database is a vehicle for producing the  
24 documents that the Trustee's case-wide experts  
25 relied on in connection with their reports,

1 considered in connection with their reports.  
2 They are effectively Rule 26 disclosures/  
3 productions, and we affirmatively make those  
4 documents available. That was the purpose of  
5 E-Data Room 1. That is not the entire universe  
6 of the Trustee's data. There is considerably  
7 more.

8 Now, the BLMIS database is an  
9 internal Relativity database that contains the  
10 processed data, processed BLMIS data in the  
11 Trustee's possession. Now, we've articulated  
12 this to Ms. Chaitman many times.

13 That includes virtually every  
14 single hard copy and electronic document  
15 recovered from the operative floors of the  
16 Lipstick Building. All of those documents are  
17 processed and in the BLMIS database. But,  
18 again, that is not the entirety of the Trustee's  
19 data. There are unscanned boxes, there are  
20 unprocessed pieces of media, there is a  
21 warehouse in Queens.

22 Again, we have disclosed all of  
23 this for years. We have specifically stated all  
24 of this to Ms. Chaitman for years. She and  
25 every other defendant is on notice of all of



1 this.

2 So the BLMIS database is, again,  
3 just a fraction of all of the data. But the  
4 indices that we produced to her two years ago  
5 are a comprehensive itemization of all of the  
6 BLMIS data in the Trustee's possession. That  
7 includes what's in the BLMIS database and also  
8 includes the unprocessed, unscanned boxes of  
9 hard copy documents and unprocessed pieces of  
10 media.

11 So she has -- not to be cute, Your  
12 Honor, but she has the keys to the kingdom and  
13 she has had it for two years. And that brings  
14 me to my second point. So the first point is  
15 there is a governing order that required Ms.  
16 Chaitman to use those indices.

17 My second point is that she has  
18 never complied with it since it was entered.  
19 She has never once referenced, let alone used  
20 the indices to lodge specific informed requests  
21 that Your Honor required that she do. Not a  
22 single time. I have never heard her even  
23 mention the indices to me or acknowledge their  
24 existence. Every single time I have brought it  
25 up in letters, in emails, in representations to

1 the Court, Ms. Chaitman ignores it. That's what  
2 she's done. And she does it in the joint  
3 statement here. I mean, we've exchanged our  
4 versions of the joint statement multiple times.  
5 She knew that we were going to emphasize the  
6 index. There is zero reference to the indices  
7 in her portion of the joint statement. So, she  
8 has never used the indices despite having them  
9 for two years.

10 The third point I want to  
11 emphasize is that notwithstanding Ms. Chaitman's  
12 failures to use those indices, we have, for the  
13 last year and a half, nevertheless continued to  
14 negotiate with her in good faith in an attempt  
15 to get her the documents that she has wanted.  
16 We have written her letters explaining -- she  
17 has requested that we run search terms. We  
18 wrote back saying there's an order governing  
19 this dispute, you're not complying it, you're  
20 not using the indices we gave to you, your  
21 search terms are otherwise unreasonable, but we  
22 are willing to sit and meet and confer with you  
23 in good faith.

24 And for months it was this  
25 tortured process where she refused to do it.

1 Nevertheless, over the course of those months,  
2 we ended up producing tens of thousands of more  
3 documents, most recently in connection with the  
4 November 2017 meet and confer. We didn't have  
5 to do any of that given her failure to abide by  
6 her end of the obligation under the March 2017  
7 order, but we did it anyway.

8 And in connection with this  
9 November 2017 meet and confer that Ms. Chaitman  
10 raised, we have -- the parties sat --

11 JUDGE MAAS: That was the one  
12 where there was a tentative offer to make the  
13 database available?

14 MR. SHIFRIN: No, Your Honor. So  
15 let me briefly take a tangent and address that.

16 JUDGE MAAS: Yes.

17 MR. SHIFRIN: The Trustee had,  
18 several months ago, filed a motion for an  
19 omnibus proceeding to address the Ponzi scheme  
20 that involved multiple defendants and multiple  
21 cases, and Ms. Chaitman was one of them.

22 JUDGE MAAS: Right.

23 MR. SHIFRIN: And in connection  
24 with the negotiations surrounding that motion,  
25 there were several over the summer, the Trustee

1 suggested that he may be willing to give  
2 defendants access to that database or otherwise  
3 produce those documents. I don't think we were  
4 floating access to the database. If anything,  
5 we were floating a potential production. In  
6 exchange for defendants' agreement to certain  
7 terms or certain aspects of the Trustee's  
8 motion.

9 Those negotiations fell apart.  
10 Ms. Chaitman and her joint defendants or  
11 colleagues, however you want to phrase it,  
12 disagreed with our offer and everything just  
13 fell apart and now that motion has morphed into  
14 something else; it's a motion for additional  
15 discovery. So, that's neither here nor there.

16 But the November 2017 meet and  
17 confer had to do -- that was the last time --

18 JUDGE MAAS: Give me the date  
19 again.

20 MR. SHIFRIN: November 2017.  
21 November 14th, 2017.

22 JUDGE MAAS: Right.

23 MR. SHIFRIN: The parties met face  
24 to face. Ms. Chaitman, again, never used the  
25 indices, she never wrote the letter to the

1 Trustee, in accordance with Your Honor's order,  
2 saying exactly what she wanted and where she  
3 thought it was located. But we nevertheless sat  
4 down with her because we didn't want to burden  
5 Your Honor or Judge Bernstein with any further  
6 motion practice. We wanted to resolve this and  
7 we wanted to get her everything that she wanted.  
8 And at that meet and confer the parties came to  
9 an agreement on certain search terms run  
10 targeting third-party documents.

11 I memorialized that in several  
12 writings, and we fulfilled our end of the  
13 bargain fully. We produced all those documents.  
14 In fact, what we actually said we would do is  
15 produce the, quote unquote, responsive  
16 documents, but we ended up second-guessing that  
17 and decided, in an effort to be fully  
18 transparent, we gave Ms. Chaitman every document  
19 that hit on those terms.

20 So after we fulfilled our end of  
21 the bargain, what does Ms. Chaitman do? She  
22 files a motion for sanctions before Judge  
23 Bernstein or she attempts to file a motion for  
24 sanctions before Judge Bernstein.

25 This was inexplicable. We did

1 exactly what we agreed. And at that hearing --  
2 it was a 7007 conference -- Ms. Chaitman first  
3 said, oh, well, the Trustee actually -- he only  
4 ran the search terms in the third-party  
5 documents and not the entire BLMIS database.

6 Your Honor, I assure you, that was  
7 the agreement that was reached but,  
8 nevertheless, immediately after that hearing the  
9 Trustee said, we have no objection to that.  
10 We'll run those same search terms across the  
11 BLMIS database and we'll produce those  
12 documents. We have since done that.

13 So under any interpretation of  
14 what happened at the November 2017 meet and  
15 confer, Ms. Chaitman has everything that she  
16 bargained for, negotiated for, asked for. We  
17 have given her everything that she has asked for  
18 and she nevertheless continues to insist that  
19 we're not giving her everything. And it's --  
20 frankly, it's -- she just asserts it without any  
21 basis and she's been doing this for two years.

22 Now, Your Honor, we have produced  
23 in total since the December 2016 arbitration  
24 first before Your Honor approximately 300,000  
25 documents, 4.8 million pages of documents. We

1 have no interest in concealing any records. We  
2 have every interest in giving Ms. Chaitman what  
3 she wants. But I will tell Your Honor, it is  
4 hard for me to believe that there is much of a  
5 good faith interest in these documents  
6 themselves given Ms. Chaitman's conduct.

7 If someone has these comprehensive  
8 indices in their possession and refuses to use  
9 them, and the way she has conducted herself over  
10 the last two years, it strikes me that she has  
11 more of an interest in perpetuating disputes and  
12 perpetuating this specter of impropriety on  
13 behalf of the Trustee, which she has spent years  
14 cultivating. And I think, frankly, Your Honor,  
15 I've been involved in this dispute for well over  
16 two years, that has always been apparent to me,  
17 that that is her primary objective. She thinks  
18 she can leverage that specter of impropriety in  
19 defense of her cases. I think it's  
20 inappropriate, I think it's improper, and that's  
21 one of the things we want to put a stop to here  
22 today.

23 So, just to crystallize the  
24 Trustee's request here. I think, with respect,  
25 Your Honor should enter an order that does the

1 following two things at a minimum. One is deny  
2 Ms. Chaitman's request for 30 million documents  
3 as inconsistent with Rule 26, which it is.

4 JUDGE MAAS: When you say 30  
5 million documents, what are you referring to?

6 MR. SHIFRIN: I'm referring to the  
7 BLMIS database.

8 Deny that request as inconsistent  
9 with both Rule 26 and Your Honor's March 2017  
10 order, which she continues to ignore.

11 JUDGE MAAS: Let me just interrupt  
12 you for a second.

13 MR. SHIFRIN: Sure.

14 JUDGE MAAS: Hard drives are now  
15 made in multi-terabytes. I assume you could  
16 take the entire BLMIS database and hand it to  
17 her on a couple of hard drives, if not just one  
18 hard drive. And then she'd have to load it onto  
19 a platform and she could manipulate the data,  
20 and I'm not using that in a negative sense, but  
21 analyze the data to her heart's content. And  
22 presumably at her client's expense. Why isn't  
23 that a solution to the problem?

24 MR. SHIFRIN: At her client's  
25 expense?



1 JUDGE MAAS: Well, except for the  
2 cost of the hard drives. You know, if I told  
3 the Trustee provide the entire database and then  
4 it's her problem dealing with it.

5 MR. SHIFRIN: Well, Your Honor, I  
6 have a number of issues with that.

7 JUDGE MAAS: One of the points she  
8 made is that presumably there's nothing in there  
9 that's privileged or work product.

10 MR. SHIFRIN: Well, that's not  
11 true, first of all. There's 30 million  
12 documents in there and we can't be sure -- these  
13 documents were collected from the Lipstick  
14 Building at a hectic time when attorneys  
15 descended on the premises, along with the FBI  
16 and consultants and a lot got scooped into the  
17 processing process, and there is absolutely work  
18 product in there.

19 MS. CHAITMAN: You mean the  
20 Trustee's work product?

21 MR. SHIFRIN: Yes. The Trustee's  
22 or Trustee's consultants. There were attorneys  
23 there and it was a time when a lot of documents  
24 were being collected for processing and things  
25 got scooped up into that process that were not

1 intended to be scooped up into that. It would  
2 be an effort to undertake, on our part, to  
3 isolate those documents.

4 But putting that aside, Your  
5 Honor, there are rules governing discovery, and  
6 I certainly don't need to tell Your Honor this,  
7 but Rule 26, there are threshold requirements,  
8 relevance, proportionality, and not only that,  
9 there is an order governing this dispute. So I  
10 think there has to be some semblance of process,  
11 procedure here such that Ms. Chaitman can't just  
12 ignore orders, can't just ignore the Federal  
13 Rules and make requests that in any other  
14 context would be denied.

15 JUDGE MAAS: On page 2 of her  
16 September 14th letter, which is Exhibit F of the  
17 joint letter, there's a list of institutions  
18 with whom Madoff presumably did business. And a  
19 list of the number of documents. And on the  
20 third page she says, "Despite our repeated  
21 requests, you've refused to produce to us the  
22 documents constituting the" --

23 MR. SHIFRIN: Yes.

24 JUDGE MAAS: I thought I heard you  
25 say that in fact you have now produced all those

1 documents? Maybe I misunderstood.

2 MR. SHIFRIN: No, not all of  
3 those. Again, there's a lot of history there.  
4 This took place between the March 2017 order and  
5 the November 2017 meet and confer.

6 After the March 2017 order was  
7 entered, three months later I want to say, and  
8 that's an approximation, Ms. Chaitman came to us  
9 and offered us these 22 or so search terms that  
10 were based on very well-known financial  
11 institutions. But again, that -- so let's just  
12 stop there for a second and take note that that  
13 itself was a violation of -- was not in  
14 compliance with the March 2017 order.

15 We told her that. We told her  
16 that this is not consistent with what Judge Maas  
17 asked you to do if you wanted anymore documents.  
18 However, we will run these numbers for you, and  
19 we did. There are a series of letters that --  
20 we didn't want to burden the record here, Your  
21 Honor, but we are happy to supplement the record  
22 with every single letter that was exchanged,  
23 every single email, and there were many in the  
24 interim period between March 2017 and November  
25 2017, where we told her that these 22 very broad

1 search terms came on 5 million documents. 1.5  
2 million of those documents were already  
3 available to her in E-Data Room 1. And we asked  
4 her to use those documents that were already  
5 available to her and narrow her focus.

6 Your Honor, if you can imagine,  
7 BLMIS was a broker-dealer. Running the search  
8 term "Fidelity" across the BLMIS database is  
9 going to retrieve an enormous volume of data  
10 that's irrelevant and not proportional and is, I  
11 would think, not interesting to Ms. Chaitman.

12 JUDGE MAAS: But also which  
13 needn't be reviewed before you turn it over,  
14 right, because it's not going to contain  
15 privileged information.

16 MR. SHIFRIN: Well, this is,  
17 again, in the same database that might contain  
18 work product, right? I don't know if  
19 necessarily those search terms would hit on the  
20 work product, but that is always an issue when  
21 we run those search terms across the BLMIS  
22 database.

23 But, Your Honor, just to fast  
24 forward or flash forward --

25 JUDGE MAAS: More importantly,

1 it's not necessarily going to generate trading  
2 records, correct?

3 MR. SHIFRIN: No, well, I mean --  
4 no, not necessarily. It might, but it's also  
5 going to generate calendar appointments, emails,  
6 all sorts of irrelevant data.

7 Now, just to -- this is probably  
8 an important piece of information. There are 30  
9 million documents in the BLMIS database. 29  
10 million of those documents are ESI. Now, what  
11 do I mean by that? Every single electronic  
12 document recovered from the operative floors of  
13 the Lipstick Building is in the BLMIS database.  
14 That includes every file from the network, from  
15 employees' hard drives, everything. Everything.  
16 Everything on any thumb drives lying around,  
17 floppy disks, CDs, all of that was processed and  
18 is in the BLMIS database. Probably personal  
19 items. It contains the full assortment of what  
20 employees kept in the ordinary course, pictures  
21 of kids, take-out menus. Everything.

22 So, Ms. Chaitman's search terms  
23 were too broad, we stated our objections and,  
24 again, I'm happy to supplement the record with  
25 our response to the letter that you're currently

1 looking at, but later on, again in an effort to  
2 resolve the dispute, we offered her documents  
3 responsive to two of those search terms, I  
4 believe it was Meadowbrook and Morgan Stanley.  
5 And we produced those documents to her.

6 Ms. Chaitman immediately  
7 complained that they included irrelevant  
8 information, that they included irrelevant  
9 documents, and that's what ended up leading to  
10 the meet and confer. She finally said, okay,  
11 I'm not getting what I want, let's meet and  
12 confer. Again, in the months preceding we were  
13 requesting this meet and confer over and over  
14 again and Ms. Chaitman was refusing.

15 So, we made a good faith effort to  
16 produce documents notwithstanding her failure to  
17 comply with the March 2017 order.

18 JUDGE MAAS: Meadowbrook and  
19 Morgan Stanley were just to test the waters?

20 MR. SHIFRIN: I think Meadowbrook  
21 the universe was particularly small.

22 JUDGE MAAS: Right.

23 MR. SHIFRIN: With Morgan Stanley,  
24 I think we sort of came to a compromise. I  
25 believe we eliminated -- this was after Ms.

1 Chaitman complained that the Meadowbrook  
2 population contained irrelevant information. We  
3 said to her that's because it included both ESI  
4 and the hard copy scanned records. We said to  
5 her that the ESI is likely to contain irrelevant  
6 information so let's put that to the side and  
7 we'll give you the documents that hit on the  
8 scanned hard copy documents and we produced  
9 those. And she agreed. And we did that in  
10 advance of one of Madoff's depositions. And  
11 that led to the meet and confer.

12 So, Your Honor, getting back to  
13 the relief that we're seeking here, I think the  
14 only correct outcome here is that a request for  
15 the production of -- the wholesale production of  
16 30 million documents, irrespective of relevance,  
17 irrespective of proportionality, irrespective of  
18 any of the limiting factors in Rule 26, and  
19 irrespective of the March 2017 order, should be  
20 denied outright. That, we respectfully request,  
21 be the first finding that Your Honor makes.

22 The second finding that we would  
23 respectfully request is that the Court finally  
24 put to rest this notion that we are out of  
25 compliance with orders and that we're concealing

1 records. We have complied with every single  
2 order, we have -- again, I have documented that  
3 long history in our half of the joint statement.  
4 We have made every effort to produce to Ms.  
5 Chaitman everything that she's asked for, and we  
6 have made every effort to negotiate with her in  
7 good faith. And I think we at this point, given  
8 Ms. Chaitman's -- if you forgive me, outlandish  
9 accusations in court, in writings, in letters,  
10 in filings accusing us and my colleagues of  
11 impropriety I think is unwarranted and we would  
12 appreciate something that definitively states  
13 the Trustee is not engaged in that kind of  
14 behavior. I think we are entitled to that.  
15 That's number two.

16 Number three, Your Honor, we want  
17 some finality here; we want ultimate resolution.  
18 We have no interest in concealing anything from  
19 Ms. Chaitman. I think there is something that  
20 we can offer here that puts to rest this  
21 dispute. And here is what we propose.

22 There are 30 million documents in  
23 the BLMIS database, that's what you're asking  
24 for. Again, this includes documents that you  
25 have recently complained about multiple times



1 are irrelevant, they're not what you want,  
2 they're emails. You say you don't want emails.  
3 The population of one million scanned hard copy  
4 documents, that is most likely, in our view, to  
5 contain what you're looking for, Ms. Chaitman.

6 So what we would like to offer  
7 here today is twofold. One, we will produce the  
8 one million documents, scanned hard copy  
9 documents, in the BLMIS database. And, number  
10 two, in anticipation of making this offer before  
11 Your Honor and with your involvement, given the  
12 state of the relationship over the last several  
13 months, we have devoted a number of attorneys to  
14 reviewing that population of one million  
15 documents in an effort to identify for Ms.  
16 Chaitman anything that can be conceivably a  
17 third-party record that reflects securities  
18 trading.

19 Now, we define that broadly,  
20 anything that looks like a third-party record  
21 and contains securities holdings or securities  
22 trading, we are in the process of finalizing  
23 that review and marking those documents. And we  
24 will produce to her not just those documents  
25 that we mark, but the entire population of

1 scanned hard copy documents that we reviewed so  
2 she can either accept our representations that  
3 these are the documents that she might be  
4 interested in, or review the entire population  
5 and check our work. She's welcome to do that.

6 But, Your Honor, that offer I  
7 think has to be contingent on a couple of  
8 things. One, that it be construed as a  
9 voluntary production that we are not obligated  
10 to make, given Ms. Chaitman's failure to comply  
11 with Rule 26 and Your Honor's March 2017 order,  
12 and that this should definitively end this  
13 dispute and we can all move on and the Trustee  
14 can move on with the prosecution of its cases  
15 without this being the distraction that it has  
16 been for the last two years.

17 I think that is an equitable  
18 result and, frankly, I don't think what  
19 objection Ms. Chaitman could have to that.

20 MS. CHAITMAN: Well, there are  
21 several million that are listed just in this hit  
22 chart that we had communicated about. Are the  
23 million pages among the several million in this  
24 hit chart?

25 MR. SHIFRIN: Yes. So, those

1 search terms were run across the entire BLMIS  
2 database.

3 MS. CHAITMAN: Right.

4 MR. SHIFRIN: So that would hit on  
5 both the scanned hard copy documents and also  
6 hit on ESI. But the ESI is what you've  
7 historically complained about because it hits on  
8 emails and calendar entries and stuff you don't  
9 want. But to the extent that those search  
10 results hit on the scanned paper then, yes, that  
11 would be included in this production.

12 MS. CHAITMAN: Well, is the  
13 million pages, is that complete? Or you've just  
14 selected this out? I mean --

15 MR. SHIFRIN: I can represent to  
16 you what those million documents are. It is,  
17 generally speaking, every single hard copy loose  
18 piece of paper that the Trustee recovered from  
19 the operative floors of the Lipstick Building in  
20 2008, early 2009, when he was appointed and his  
21 consultants and his attorneys came in there and  
22 took control of that stuff. That's all we can  
23 represent to you. That's what BLMIS kept on  
24 those floors.

25 Whether it's complete, whether it

1 includes every potential trading record, we can  
2 never, Your Honor, and we said this in December  
3 of 2016, we can never make that kind of a  
4 representation with this much data. How can we  
5 know? How can we know there's not something on  
6 some floppy disk hidden at the warehouse? We  
7 can never be sure. But I think that is a  
8 reasonable solution to this problem.

9 JUDGE MAAS: Ms. Chaitman?

10 MR. DEXTER: Why do you think the  
11 hard copy documents are more likely to be  
12 relevant documents than the ESI?

13 MR. SHIFRIN: Well, I can respond  
14 to that. I think it's because Ms. Chaitman is  
15 looking for third-party records, some of which  
16 are old, right. Are they going to be in ESI or  
17 are they going to likely -- to the extent BLMIS  
18 maintained them, they probably received them  
19 from the third parties over the years and kept  
20 them somewhere on the premises.

21 MS. CHAITMAN: Or scanned them and  
22 kept Microsoft copies of them.

23 JUDGE MAAS: You mean microfilm.

24 MS. CHAITMAN: Microfilm, yes.

25 MR. SHIFRIN: Which we have

1 restored and produced to her as part of events  
2 that preceded the March 2017 order from the  
3 earlier time periods.

4 JUDGE MAAS: So, in terms of  
5 microfilm or microfiche, Mr. Jacobs represented  
6 that there were a number of reels, I forget the  
7 exact number, that potentially might contain  
8 trading records, and those were restored or put  
9 in electronic form and produced.

10 MR. SHIFRIN: Um-hum.

11 JUDGE MAAS: I take it among the  
12 microfilm documents you're not aware of anything  
13 else that potentially contains trading records?  
14 Is that accurate?

15 MR. SHIFRIN: Absolutely, Your  
16 Honor, but -- well, let me just -- we have to go  
17 back in time and start from where we were in  
18 December of 2016. At the time, and this is part  
19 of the problem, Ms. Chaitman's definition of  
20 trading records has evolved over time to include  
21 other things. In December of 2016 we were  
22 talking about pre-1992 records. And if you read  
23 the transcript from December of 2016 the focus  
24 was on clearinghouse records.

25 But what we did do in the

1     aftermath of the December 2016 arbitration, and  
2     this is all reflected in Your Honor's March 2017  
3     order, we restored all known pre-1992 microfilm  
4     reels. And at first we ran search terms across  
5     those documents, but when Ms. Chaitman  
6     complained we just produced every document  
7     restored from those reels.

8                   MS. CHAITMAN: Can I just make  
9     that distinction. These are pre-1992. I was  
10    focusing on a different issue, Your Honor,  
11    because one of the issues that the Trustee's  
12    expert, Mr. Dubinsky, dealt with was pre-1992  
13    trading and I was focusing on that issue.

14                   But isn't it true that there are  
15    hundreds and hundreds of microfilm reels that  
16    have not been produced or -- these were --

17                   MR. SHIFRIN: Your Honor, the  
18    microfilm --

19                   MR. CREMONA: My understanding,  
20    excuse me, is that Judge Bernstein directed you  
21    that after we produced those microfilm reels  
22    that were restored to review them and then  
23    identify documents you found relevant and  
24    justify at that point why additional reels  
25    should be restored at the expense of the

1 Trustee, after the considerable expense and  
2 effort that was undertaken to restore those  
3 reels.

4 That undertaking by you was never  
5 done, and it was never articulated to the Court  
6 and in subsequent meetings with the defense  
7 group that, as far as I am aware, and I was at  
8 the meetings, that was somewhat abandoned by  
9 your group.

10 MS. CHAITMAN: To be precise, what  
11 Judge Bernstein said was that, I think it was  
12 900 some odd reels that were not pre-1992, and  
13 Judge Bernstein -- you represented or  
14 Mr. Sheehan said he'd never reviewed those  
15 reels. And Judge Bernstein asked what was on  
16 them and Mr. Sheehan said he couldn't say and  
17 Judge Bernstein said I could select 20 of those  
18 reels without being assessed personally for it  
19 or my clients, but that after that we would be  
20 assessed for it. And Mr. Kratenstein and I  
21 selected a couple of those reels and they were  
22 not productive and we didn't follow up on that.

23 Instead we've been focusing -- so  
24 those have never been explored and I'm not  
25 raising that now. What I'm really asking for is

1 all of the third-party trading records, which is  
2 precisely what we had the meet and confer about.

3 JUDGE MAAS: Some of those might  
4 be on the microfilm.

5 MS. CHAITMAN: They may very well  
6 be, and it may be that I'm going to come back  
7 and ask for them, Your Honor, but I'm trying to  
8 do this one step at a time because it's so  
9 massive. And it just seemed to me the BLMIS  
10 database was the easiest approach, if we could  
11 establish -- it's been frustrating to me that  
12 even though Baker has acknowledged it had all  
13 these hits for these names, it didn't produce  
14 them.

15 JUDGE MAAS: It produced them for  
16 Meadowbrook and for Morgan Stanley.

17 MS. CHAITMAN: You know what, I  
18 don't -- it may be my failing, but I don't  
19 remember the conversations that --

20 MR. SHIFRIN: I can refresh your  
21 memory, Ms. Chaitman. We produced those  
22 documents.

23 JUDGE MAAS: When?

24 MR. SHIFRIN: Specifically for  
25 Meadowbrook. This was in late October, early



1 November, before the meet and confer.

2 MS. CHAITMAN: Well, Meadowbrook  
3 is different from Morgan Stanley. I mean --

4 MR. SHIFRIN: We produced some of  
5 those as well. Again, I want to reiterate what  
6 I said before. We produced those documents, we  
7 produced the Meadowbrook documents, and Ms.  
8 Chaitman complained that she's not interested in  
9 emails. There was a ton of irrelevant materials  
10 in those productions precisely because they're  
11 so broad.

12 So that's when we said, all right,  
13 we'll produce Morgan Stanley as well, but since  
14 you're complaining about the ESI, the emails  
15 that you're getting in these productions, let's  
16 put the ESI to the side and we'll give you the  
17 hits within the scanned paper, and we produced  
18 those to you.

19 MS. CHAITMAN: Okay. I think that  
20 it would be -- rather than you screening them, I  
21 think if you just would produce all the  
22 documents with the hits and I will -- if it's  
23 burdensome for me, so be it. I just would like  
24 to see every document in BLMIS's database that  
25 names these institutions.

1 MR. SHIFRIN: Your Honor, we have  
2 stated our objections to those search terms in  
3 letters that we can submit to you and I can  
4 repeat them here.

5 JUDGE MAAS: Well, Chase is going  
6 to give you more than a million hits, 348,000 of  
7 them unique. Irving Trust, which hasn't existed  
8 in a long time, has even larger numbers of  
9 unique hits, as does Lehman.

10 MR. SHIFRIN: Right.

11 JUDGE MAAS: One of the problems  
12 is that that's likely to give you a lot of  
13 irrelevant material. I thought there was talk  
14 of also running it with account numbers.

15 MR. SHIFRIN: That's what we did  
16 in the aftermath of the November 2017 meet and  
17 confer. Just to reiterate and clarify what we  
18 did, the parties agreed and I stand by this  
19 representation, that we would run the account  
20 numbers within the Rule 2004 database.

21 Now that, Your Honor, it's  
22 important to understand, is separate from the  
23 BLMIS database. These are documents that the  
24 Trustee subpoenaed and obtained in connection  
25 with their Rule 2004 investigation years ago.

1 MS. CHAITMAN: That was never my  
2 intent and it was never confirmed by me in  
3 writing. I understood you were going to search  
4 the BLMIS database.

5 MR. SHIFRIN: I understand that's  
6 your impression of the meeting. I'll just  
7 emphasize that Ms. Chaitman subsequently served  
8 a formal document request. We responded that we  
9 would do exactly what I said we would do. There  
10 are several writings, emails that confirmed this  
11 and, Ms. Chaitman, I have sent those writings to  
12 you to prove that this was our understanding of  
13 the agreement.

14 But in any event, after you  
15 complained that we didn't run those search terms  
16 in the BLMIS database, we immediately did so and  
17 produced those documents. So you have  
18 everything that you asked for under your  
19 interpretation of what happened there at the  
20 November 2017 meet and confer.

21 JUDGE MAAS: I want to make sure I  
22 understand this.

23 MR. SHIFRIN: Sure.

24 JUDGE MAAS: You ran against the  
25 Rule 2004 database all of these search terms

1 with account numbers?

2 MR. SHIFRIN: No, no, no. These  
3 were account numbers, known account numbers for  
4 BLMIS/Madoff accounts. And we sent those  
5 accounts to Ms. Chaitman, those account numbers  
6 to Ms. Chaitman.

7 JUDGE MAAS: Okay. And some of  
8 those account numbers, for example, may have  
9 involved Fidelity?

10 MR. SHIFRIN: Yeah, may have. And  
11 I don't have the full list in front of me, but  
12 BLMIS had dozens of accounts.

13 JUDGE MAAS: Okay. Did I hear you  
14 say that you also eventually ran it against the  
15 BLMIS database?

16 MR. SHIFRIN: Yes. So, again, our  
17 understanding, and I think this was quite clear  
18 again in many writings, was that we would run  
19 those search terms in the Rule 2004 database.

20 When Ms. Chaitman went to Judge  
21 Bernstein and tried to move for sanctions  
22 against us, she stated for the first time that  
23 the Trustee said he would run those search terms  
24 in the BLMIS database and didn't. That was the  
25 first I had heard that.

1 Two hours, probably less, after  
2 that hearing I emailed Ms. Chaitman, and I can  
3 forward you this string of emails, saying  
4 precisely that I did not know this is what you  
5 wanted. We have no objection.

6 JUDGE MAAS: I think I actually  
7 have that email string.

8 MR. SHIFRIN: Yes. We have no  
9 objection to running those search terms in the  
10 BLMIS database. And a couple of weeks later, I  
11 forget exactly when, we produced all those  
12 documents.

13 So, this is an important point to  
14 stop and consider. Even under Ms. Chaitman's  
15 interpretation of what happened at the November  
16 meet and confer, she has what she asked for and  
17 now she's moving for sanctions. So, this is  
18 what I mean by it's inexplicable.

19 JUDGE MAAS: So it sounds like,  
20 Ms. Chaitman, in a focused way of doing this,  
21 the Trustee, in two steps, ran it against both  
22 of the databases, the 2004 database and the  
23 BLMIS database using the account numbers and  
24 produced all those records, electronic or hard  
25 copy.

1 MR. SHIFRIN: Yes.

2 JUDGE MAAS: Why isn't that  
3 sufficient? Well, before I ask why isn't that  
4 sufficient, have you reviewed those materials?

5 MS. CHAITMAN: Yes. And the  
6 records are not complete. Well, they may not be  
7 complete in the Trustee's possession.

8 JUDGE MAAS: Right.

9 MS. CHAITMAN: But what I would  
10 like is for all of the documents that were the  
11 hits, and it may be burdensome for me to go  
12 through it, but I'd like to go through those.  
13 Some of the documents may not be legible. If  
14 you put an account number in, it may not be  
15 legible in the document, it may not be  
16 responsive. And it's important enough for my  
17 clients that I'd like to have every hit and let  
18 me go through it and satisfy myself.

19 MR. SHIFRIN: There is an  
20 important point that's worth emphasizing here.  
21 The ESI is fully searchable, so that the  
22 searching is reliable. There are no issues with  
23 searching.

24 If there are issues with search  
25 term hits not retrieving every document and any

1 issues with handwriting or really old pieces of  
2 scanned paper, it's going to be in the scanned  
3 paper. We're offering to give you all of that.  
4 So, any search term problems you have are  
5 resolved by virtue of us giving you the one  
6 million scanned pieces of paper.

7 But with respect to the ESI,  
8 you've run the account numbers for the key  
9 accounts, all known accounts that BLMIS  
10 maintained, and you have all those documents.  
11 Searching for Morgan Stanley or Fidelity or  
12 whatever it is, is going to give you a ton of  
13 irrelevant information, and I think our  
14 objections are valid, Your Honor.

15 JUDGE MAAS: Is there -- I'm  
16 sorry.

17 MR. SHIFRIN: No, it's okay.  
18 Please.

19 JUDGE MAAS: Is there a principal  
20 outside institution such as Fidelity or Morgan  
21 Stanley with which BLMIS traded? In other  
22 words --

23 MS. CHAITMAN: There are.

24 JUDGE MAAS: -- there are maybe 15  
25 entities listed here, maybe a few more. I'm

1 asking whether one of these was the principal  
2 outside brokerage firm that BLMIS was using.

3 MR. SHIFRIN: I don't want to  
4 speculate. I have colleagues who specialize in  
5 that.

6 JUDGE MAAS: Let me ask Ms.  
7 Chaitman based on her review. Is there one of  
8 these that you think is more likely to yield  
9 trading records?

10 MS. CHAITMAN: The terms that are  
11 listed here are not complete. For example, we  
12 just found Bank of New York Mellon trading  
13 records that are very important for some of our  
14 clients. And, you know, this list says Chase is  
15 actually -- doesn't include JPMorgan Chase. I  
16 mean, in theory it should pick it up, but I  
17 don't know that it did, because there would be  
18 many more than 916,000 --

19 JUDGE MAAS: But you furnished  
20 this list, right?

21 MS. CHAITMAN: Yes. But this was  
22 done probably two years ago.

23 JUDGE MAAS: Okay. But if it's  
24 not complete, the fault lies with you, not with  
25 the Trustee.



1 MS. CHAITMAN: No, I know, but I  
2 thought you were asking me whether there were  
3 institutions that are not on here. The answer  
4 is yes.

5 JUDGE MAAS: Well, I appreciate  
6 knowing that, but what I'm asking is whether  
7 it's on the list or not, is there a particular  
8 institution that predominated in terms of  
9 trading, to your understanding?

10 MS. CHAITMAN: I don't think there  
11 is one institution. I mean, Madoff has  
12 testified that he bought T-bills with investment  
13 advisory customers' money and that he did that  
14 through JPMorgan Chase, Bear Stearns, Lehman  
15 Brothers, Morgan Stanley.

16 JUDGE MAAS: Do that more slowly.

17 MS. CHAITMAN: JPMorgan Chase,  
18 Bear Stearns, Lehman Brothers.

19 JUDGE MAAS: Right.

20 MS. CHAITMAN: Morgan Stanley, and  
21 Fidelity. But I just realized that that is not  
22 complete because we just found some statements  
23 from Bank of New York Mellon which were T-bills  
24 that were purchased with investment advisory  
25 customers' money. So --

1 JUDGE MAAS: He testified, I  
2 thought I read someplace, that he bought -- I'm  
3 hesitating because I want to say six billion.

4 MS. CHAITMAN: He did. That's  
5 what he testified, that he maintained a  
6 portfolio of six billion. It was a billion and  
7 a half at four institutions. But what I'm  
8 saying is since his testimony I have actually  
9 found records of T-bills that were purchased at  
10 Bank of New York Mellon, which he hadn't  
11 mentioned.

12 JUDGE MAAS: Presumably you have  
13 those records.

14 MS. CHAITMAN: I just have them  
15 for 2008.

16 MR. CREMONA: Your Honor, I think  
17 it's important to correct the record.  
18 Respectfully, that's speculation and unsupported  
19 conjecture. It's our position that no trades  
20 were made on behalf of IA customers.

21 JUDGE MAAS: I understand the  
22 dispute and I understand that Ms. Chaitman's  
23 position either at the omnibus hearing or  
24 individual trials will be that any trading that  
25 occurred had to be for the benefit of a

1 particular Madoff customer or that it should be  
2 attributed at a minimum to a Madoff customer,  
3 and there is no way that the two sides are going  
4 to agree about that.

5 But part of your objection is that  
6 these requests are overbroad, and what I was  
7 trying to explore is whether we can test the  
8 waters and see whether they are overbroad. So,  
9 for example, picking Bear Stearns and giving Ms.  
10 Chaitman all of the documents that are hits,  
11 which is 653,000 documents, and if she can find  
12 trading records that haven't been produced, that  
13 would inform the discussion. If she can't, that  
14 also would inform the discussion.

15 MS. CHAITMAN: I believe that  
16 that's a good idea.

17 JUDGE MAAS: Let me hear from  
18 counsel first for the Trustee.

19 MR. SHIFRIN: One thing that's  
20 worth emphasizing here is that the account  
21 numbers that we ran were account numbers for all  
22 known BLMIS/Madoff banks. There were about a  
23 hundred of them, give or take. So more than  
24 just the names of the banks.

25 If we're running account numbers

1 across ESI and we're searching for trading  
2 records, I think the documents that contain the  
3 account numbers are the ones that are actually  
4 going to be a third-party record because a  
5 third-party record is going to contain the  
6 account information, right?

7 JUDGE MAAS: Right.

8 MR. SHIFRIN: If we're searching  
9 for the names of the institutions, you're going  
10 to get calendar appointments, emails, and I know  
11 Your Honor would like to explore what this  
12 population looks like, but we've done this  
13 already with two of the search terms and Ms.  
14 Chaitman is on record for complaining about what  
15 was in there.

16 Again, if there are going to be  
17 additional -- I can't obviously state this  
18 definitively, I could never say this  
19 definitively, but if we're dealing with search  
20 terms here, the documents that are amenable to  
21 problems with search terms are the hard copy  
22 documents. And we are prepared to give her all  
23 of those, with the subset of that population of  
24 documents that we have identified as potentially  
25 of interest to Ms. Chaitman, without

1 representing that they actually reflect real  
2 trading activity, without representing anything  
3 about them, simply in an effort to identify  
4 documents that are arguably responsive to Ms.  
5 Chaitman's request, and she can sort through it.

6 MS. CHAITMAN: May I just ask, are  
7 you saying that you're going to give me all the  
8 documents with hits including group in this  
9 column?

10 MR. SHIFRIN: We will give you --  
11 if we produce all of the scanned hard copy  
12 documents --

13 MS. CHAITMAN: Is that this  
14 column? I don't know the term, scanned hard  
15 copy.

16 MR. SHIFRIN: That's the entire  
17 BLMIS database. The scanned hard copy are a  
18 subset of the entire BLMIS database.

19 MS. CHAITMAN: Right.

20 JUDGE MAAS: A fairly small subset  
21 by comparison, right?

22 MR. SHIFRIN: Right, because ESI,  
23 just by its nature, is enormous. I mean, we're  
24 dealing with an enormous volume of data. One  
25 million hard copy pieces of documents, and

1 that's not pages, by the way, that's every  
2 scanned piece of paper, every piece of paper  
3 recovered from an entire company from three  
4 floors, 17th, 18th 19th floor, every piece of  
5 document, every hard copy document coming from  
6 every office, work space, et cetera.

7 So, to the extent there are  
8 documents within that population, that one  
9 million document population that would hit on  
10 those search terms, they would be included,  
11 absolutely.

12 MS. CHAITMAN: Let me just, if I  
13 may, Your Honor, may I ask a question?

14 JUDGE MAAS: Yes.

15 MS. CHAITMAN: Let's assume that  
16 there was someone in Madoff's offices who would  
17 annually collect all third-party statements,  
18 let's just assume that, and put them in a  
19 warehouse in Queens. That would not be  
20 encompassed in this, right?

21 MR. SHIFRIN: Anything that's  
22 unprocessed and not in the BLMIS database, so an  
23 unscanned box of documents, no, that wouldn't be  
24 encompassed in this.

25 JUDGE MAAS: But you also have

1 indices that the Trustee furnished, I think at  
2 my direction, so that you could go through the  
3 indices and say there may be something in box  
4 63.

5 MR. SHIFRIN: And they're  
6 substantive, too.

7 JUDGE MAAS: And I gather that  
8 hasn't happened.

9 MR. SHIFRIN: Not once. And there  
10 are descriptors in each line item that tell you  
11 what's in the box.

12 JUDGE MAAS: And the Trustee  
13 further went through that exercise -- correct me  
14 if I'm wrong -- and found some microfiche that  
15 potentially was responsive and restored all of  
16 those.

17 MR. SHIFRIN: We restored all  
18 pre-1992 microfilm reels because that's what she  
19 was after at the time and we produced all  
20 documents restored from those microfilm reels.  
21 In fact, Ms. Chaitman now has all documents  
22 contained and stored on every single microfilm  
23 reel that the Trustee has restored. So there's  
24 no --

25 MS. CHAITMAN: But that's just the

1 pre-1992.

2 MR. SHIFRIN: Well, no, that  
3 includes some post-'92 as well. Every microfilm  
4 reel that we restored and processed, you have  
5 all those documents. The only documents you  
6 don't have are the reels that we did not restore  
7 and did not process, but that dispute you raised  
8 with Judge Bernstein and he gave you  
9 instructions.

10 MS. CHAITMAN: Right. That's  
11 about a thousand reels that haven't been  
12 restored and processed.

13 MR. SHIFRIN: I don't have the  
14 numbers before me, but something along those  
15 lines. But there's no microfilm document that  
16 Ms. Chaitman doesn't have.

17 JUDGE MAAS: When you say it was  
18 raised with Judge Bernstein and he ruled, what  
19 specifically did he rule?

20 MR. SHIFRIN: Again, this is a  
21 part of how this dispute has been kind of  
22 muddled. Ms. Chaitman, in our view, improperly  
23 raised the microfilm issue before Judge  
24 Bernstein in connection with some briefing  
25 relating to the Madoff deposition. This was



1 approximately three months after Your Honor  
2 entered the March 2017 order.

3 In that briefing she reiterated  
4 her usual accusations that we're hiding trading  
5 records. In our view she was improperly  
6 circumventing Your Honor's March 2017 order.  
7 That's what she did.

8 Now, for a variety of reasons, at  
9 that first hearing it took -- Judge Bernstein  
10 wasn't aware of the March 2017 order. We had a  
11 subsequent hearing and one of the first things  
12 that Judge Bernstein said at the subsequent  
13 hearing was that part of the problem, and I'm  
14 paraphrasing what he said, is that I learn  
15 something new each time you guys come here.  
16 What he was referring to was Your Honor's March  
17 2017 order.

18 And on the basis of that order, he  
19 didn't order anything but he suggested that Ms.  
20 Chaitman identify a small number of reels. The  
21 Trustee restored those reels, produced those  
22 documents, and if Ms. Chaitman can identify  
23 something in there that gives reason to suspect  
24 there are additional documents of interest on  
25 these other reels, she can make that showing.

1 She later identified five reels;  
2 we restored those, we produced those documents  
3 and then she abandoned the effort. So as far as  
4 we're concerned we discharged our obligations in  
5 connection with that separation.

6 Your Honor, frankly, we've done  
7 this in every conceivable context, in every  
8 conceivable way. We have constantly and  
9 consistently complied with every order, with  
10 every suggestion. I think we've done more than  
11 we had to. I think in retrospect, given the  
12 headaches that this has created, I think it  
13 probably would have been better to simply refuse  
14 to negotiate with Ms. Chaitman further until she  
15 complied with the March 2017 order. I think we,  
16 arguably, made a mistake by engaging with her  
17 because that just led to all of this and has  
18 drawn this dispute out more than it needed to  
19 be.

20 JUDGE MAAS: So let me just make  
21 sure I understand the ask, Ms. Chaitman. You  
22 want every third-party document that's  
23 responsive -- let me rephrase that.

24 You want every third-party  
25 document on the list on pages 2 and 3 of the

1 joint September 14th letter. It's not a joint  
2 letter, I misspoke.

3 MS. CHAITMAN: It's Exhibit F.

4 JUDGE MAAS: Yes, it's Exhibit F.  
5 Plus some other institutions which were not  
6 listed --

7 MS. CHAITMAN: Right.

8 JUDGE MAAS: -- to be given to you  
9 in toto. Is that the ask?

10 MS. CHAITMAN: The ask is, yes,  
11 the column which says documents with hits,  
12 including group. And then there are a few  
13 institutions of which I'm aware now which were  
14 not included in this.

15 JUDGE MAAS: But when you got it  
16 for Meadowbrook and Morgan Stanley, I gather  
17 there was a lot of irrelevant material in there.

18 MS. CHAITMAN: I'll go through it.

19 JUDGE MAAS: That's fine, but were  
20 there any additional trading records that you  
21 found?

22 MS. CHAITMAN: You know, I don't  
23 have a recollection, Your Honor, I apologize. I  
24 don't remember the Morgan Stanley at all. My  
25 recollection is the Meadowbrook didn't have

1 anything that was evidence of a trading record,  
2 but I don't remember the Morgan Stanley. I know  
3 that according to Mr. Madoff a substantial  
4 amount of trading was done through Morgan  
5 Stanley. And it may be that those are in hard  
6 copy boxes in the Queens warehouse and I'll just  
7 have to check that index.

8 MR. SHIFRIN: Your Honor, part of  
9 the -- sorry, go ahead.

10 JUDGE MAAS: Go ahead.

11 MR. SHIFRIN: Part of the problem  
12 here is what Ms. Chaitman just said suggests  
13 that this is going to be drawn out. She has had  
14 nearly two years to use these indices. At some  
15 point time's up. And I think if we're offering  
16 all of the scanned hard copy documents and  
17 putting the resources and the hours and the  
18 attorney time to review those documents for Ms.  
19 Chaitman and identify records that are of  
20 interest, given everything else in our joint  
21 statement, given everything else we have done  
22 over the last two years, I think we've satisfied  
23 our obligations under the rules. I think we  
24 need some finality and ultimate resolution here.  
25 Otherwise we're going to be back here in a few

1 months.

2 JUDGE MAAS: One of the issues  
3 that arose when you were talking to Judge  
4 Bernstein about the omnibus hearing was that  
5 there were a large number of Ms. Chaitman's  
6 clients where discovery was closed and I think  
7 seven where it was open. Maybe it wasn't just  
8 Ms. Chaitman's clients, but there was an issue,  
9 I read, in relation to the omnibus hearing about  
10 how many folks still had time to take further  
11 discovery.

12 I guess one question I have is  
13 where are Ms. Chaitman's cases -- I should ask  
14 you, Ms. Chaitman -- in terms of discovery  
15 deadlines?

16 MS. CHAITMAN: Well, this is all  
17 pursuant to a discovery demand that was served  
18 when discovery was opening all of my clients'  
19 cases and Judge Bernstein has consistently  
20 treated it that way. There are other issues  
21 that are open. I've subpoenaed a number of  
22 traders and Judge Bernstein has stayed my  
23 ability to take the discovery from those  
24 traders, but he has recognized repeatedly that  
25 the subpoenas were served within the time frame

1 that the case management orders permitted.

2 MR. SHIFRIN: Your Honor, just to  
3 respond to that, there are -- the document  
4 requests that served as the basis for this  
5 dispute years ago was not served timely in every  
6 single case. Specifically there are three cases  
7 that are trial ready, the two Nelson cases and  
8 the Saren-Lawrence case. This dispute is not  
9 applicable to those cases.

10 MS. CHAITMAN: Right, except for  
11 those three, yeah. I agree, there are three  
12 cases that are trial ready.

13 JUDGE MAAS: Anything else from  
14 either side?

15 MR. SHIFRIN: I could say more. I  
16 don't want to repeat myself, but just as long as  
17 the relief that we're requesting is clear. Ms.  
18 Chaitman's request here is for 30 million  
19 documents, that's what she requested in her  
20 papers. I think that should be denied outright,  
21 again on the basis of Rule 26 and the March 2017  
22 order.

23 We would like something in writing  
24 that states the Trustee has complied with all  
25 orders given the chronology that we have

1 provided to Your Honor, which I think is a  
2 sufficient basis to make that conclusion and  
3 will hopefully prevent Ms. Chaitman from coming  
4 to court another day and continuing to lodge  
5 these accusations against the Trustee and my  
6 colleagues and myself.

7                   Number three, Your Honor, we  
8 think, again, our offer of producing the million  
9 scanned hard copy documents, we want that to be  
10 understood as a voluntary production, not  
11 something that's ordered, because I think under  
12 the relevant rules and given the context of this  
13 dispute, we have discharged our obligations  
14 multiple times. So this is really yet another  
15 offer of good faith production of documents to  
16 give Ms. Chaitman what she wants, but it is on  
17 condition that this be ultimately resolved after  
18 that production is made, and I don't know  
19 whether we can formally preclude Ms. Chaitman  
20 from raising this issue again, but I think some  
21 sort of statement that this discharges the  
22 Trustee's obligations under her requests and  
23 under her motion would be most appreciated.

24                   JUDGE MAAS: Anything else, Ms.  
25 Chaitman?

1 MS. CHAITMAN: Yes, Your Honor, if  
2 I may. While I'm sure it would be appreciated,  
3 I don't think it's warranted at this point in  
4 time, Your Honor, because there is a painful  
5 history of what I believe has been a deliberate  
6 attempt to mislead the Court and the defendants  
7 about what was in the data room, what  
8 constituted the Trustee's production. Judge  
9 Bernstein himself said to Mr. Sheehan, you had  
10 two orders to produce these documents and you  
11 didn't. I have quoted to Judge Bernstein the  
12 transcripts where representatives of Baker have  
13 stood up and said every single trading record is  
14 in the e-data room and the judge saying, well,  
15 if there's anything -- any trading records that  
16 aren't in the e-data room, put them in  
17 immediately. And you've heard today that the  
18 e-data room was never supposed to contain all  
19 the trading records. Well, that's something  
20 that they've now stated but they never stated  
21 that to Judge Bernstein two years ago.

22 MR. SHIFRIN: That's false.

23 MS. CHAITMAN: Well, it's all  
24 documented.

25 MR. SHIFRIN: It is.



1 JUDGE MAAS: Wait, let Ms.

2 Chaitman speak.

3 MS. CHAITMAN: I just think that  
4 there's a history here and I don't think that  
5 there's a basis on which you can make a finding  
6 about that because there's a long history and  
7 most of it has been before Judge Bernstein.

8 JUDGE MAAS: Go ahead.

9 MR. SHIFRIN: Your Honor, this is  
10 what we effectively want to put a stop to. The  
11 problem is that Ms. Chaitman is taking advantage  
12 of the length of this dispute, the various  
13 different contexts that she's raised it, and she  
14 is taking comments by Judge Bernstein and by  
15 counsel to the Trustee completely out of  
16 context. And I assure you that if you read  
17 those quotes that she has in her letter, if you  
18 read the entire transcript, you will come to a  
19 different conclusion, I assure you.

20 So I am happy to simply supplement  
21 the record and give Your Honor the benefit of  
22 the complete context that Ms. Chaitman is not  
23 providing, and it will show that Judge Bernstein  
24 never ordered us to produce anything. That was  
25 a 7007 conference where Ms. Chaitman was

1 requesting permission to file a motion to  
2 compel. Judge Bernstein tried to sort it out  
3 for us, as he often does. It didn't work. He  
4 gave her --

5 JUDGE MAAS: Is that the one where  
6 he suggested either make a motion or come back  
7 to me? Or something else?

8 MR. SHIFRIN: I believe so. He  
9 authorized her to make a motion at the end of  
10 that conference. And the quote that Ms.  
11 Chaitman says, oh, if there are additional  
12 trading records and he has to add them to the  
13 database, I'm paraphrasing, if read the context  
14 there it doesn't mean what Ms. Chaitman says it  
15 means. That was not an order. He authorized  
16 her to file a motion to compel. If that was an  
17 order, why would we be here right now?

18 She subsequently filed a motion to  
19 compel and it was subsequently brought before  
20 Your Honor and it subsequently led to the  
21 December arbitration and all the orders that  
22 followed.

23 The other comment that she  
24 routinely cites where Judge Bernstein said there  
25 are two orders ordering you to produce

1 documents, one of those being Your Honor's  
2 order, and the other was he was alluding to the  
3 conference that Ms. Chaitman says was an order,  
4 but he was doing that on the basis of  
5 misinformation that Ms. Chaitman brought to  
6 Judge Bernstein. And this was the conference  
7 with respect to the microfilm that I was  
8 speaking about earlier, and when we clarified  
9 the record at the next hearing, he abandoned  
10 that.

11 JUDGE MAAS: Send me the  
12 transcript of those two conferences.

13 MR. SHIFRIN: Absolutely.

14 JUDGE MAAS: And I will await  
15 receiving the transcript of this conference, and  
16 then I will rule. Thank you all.

17 MR. SHIFRIN: Thank you very much,  
18 Your Honor.

19 MS. CHAITMAN: Thank you, Judge.

20 (Conference concluded 11:25 a.m.)

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25

1 C E R T I F I C A T E

2

3 I, NANCY C. BENDISH, a Certified  
4 Court Reporter and Notary Public of the States  
5 of New Jersey and New York, do hereby certify  
6 that the foregoing is a true and accurate  
7 transcript of the proceedings as taken  
8 stenographically by and before me at the time,  
9 place, and on the date hereinbefore set forth.

10 I DO FURTHER CERTIFY that I am  
11 neither a relative nor employee nor attorney nor  
12 counsel of any party in this action and that I  
13 am neither a relative nor employee of such  
14 attorney or counsel, and that I am not  
15 financially interested in the event nor outcome  
16 of this action.

17

18

19 Nancy C. Bendish, CCR, RMR, CRR  
20 Realtime Systems Administrator  
Certificate No. XI00836

21

22

23 Dated: November 20, 2018

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**CHAITMAN LLP**  
**465 PARK AVENUE**  
**NEW YORK, NY 10022**  
**(888) 759-1114**  
TELEPHONE & FAX

*HELEN DAVIS CHAITMAN*  
*hchaitman@chaitmanllp.com*

January 25, 2019

**VIA ECF AND FEDERAL EXPRESS**

The Honorable Stuart M. Bernstein, U.S.B.J.  
United States Bankruptcy Court  
Southern District of New York  
One Bowling Green  
New York, New York 10004-1408

**Re: *In re Bernard L. Madoff, Investment Securities, LLC*, Adv. Pro. No. 08-01789;  
*Irving H. Picard v. Wilenitz*, Adv. Pro. No. 10-04995 (SMB)**

Dear Judge Bernstein:

I write on behalf of Defendants listed on ECF No. 14283<sup>1</sup> (“Defendants”) in response to the Trustee’s letter of January 22, 2019 which was filed in *Picard v. Wilenitz*, Adv. Pro. No. 10-04995, ECF No. 127,<sup>2</sup> in opposition to Defendants’ request to appeal Judge Maas’ January 2, 2019 Order denying Defendants’ most recent motion to compel with respect to third-party trading records evidencing the trading activities of Madoff and BLMIS for the period from 1980 – 2008 (the “Trading Records”). *See* ECF No. 18354. Defendants’ request was filed pursuant to the procedures set forth in the October 4, 2016 Order Appointing a Discovery Arbitrator (the “Order Appointing Arbitrator”). *See* ECF No. 14227.

**I. The Court should permit an appeal and 28 U.S.C. § 1292 is inapplicable**

The Trustee, citing 28 U.S.C. § 1292, argues that “federal law does not permit” “an interlocutory appeal of a discovery order.” *Wilenitz*, ECF No. 127 at 2. However, the Order Appointing Arbitrator expressly permits appeals of Judge Maas’ orders and outlines the procedure for pursuing such appeals. *See* ECF No. 14227, ¶ 10 (“Any party may request an appeal of any ruling of the Discovery Arbitrator by submitting a letter to the Court . . .”). If Defendants’ rights to appeal were restricted as suggested by the Trustee, then Defendants would never have consented to bring matters before the Discovery Arbitrator and certainly the Order Appointing Arbitrator would not have expressly provided for *de novo* review of the Discovery Arbitrator’s findings of fact and conclusions of law. *See* ECF No. 14227, ¶ 10.

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<sup>1</sup> Unless otherwise indicated, all ECF references are to the main docket in the BLMIS liquidation, Adv. Pro. No. 08-01789.

<sup>2</sup> The Trustee’s letter was filed on the *Wilenitz* docket, but not on the main docket in the BLMIS liquidation.



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This Court's authority to enter the Order Appointing Arbitrator is derived from Fed. R. Bankr. P. 9019(c), ECF No. 14227 at 2, which provides that a discovery arbitrator can be appointed pursuant to "stipulation of the parties." Fed. R. Bankr. P. 9019(c). Here, the parties have stipulated to an appeals procedure pursuant to the Order Appointing Arbitrator. Defendants have complied with the relevant procedure, *see* ECF No. 14227, and this Court would be without authority to impose on Defendants the unstipulated appellate hurdles urged by the Trustee. *See, e.g., In re Jorgensen*, 66 B.R. 104, 108 (B.A.P. 9th Cir. 1986) ("The court may appoint an arbitrator only with the stipulation of the parties.").

Not only would 28 U.S.C. § 1292 be displaced by the Order Appointing Arbitrator, but there is no basis to believe that the statute has any relevance whatsoever in the first place as it says nothing of appeals to the Bankruptcy Court. Rather than governing appeals to the Bankruptcy Court, 28 U.S.C. § 1292 is concerned with appeals to the district court and to the court of appeals. There is no case of which we are aware in which 28 U.S.C. § 1292 has governed an appeal of an arbitrator's order to the Bankruptcy Court.

The Trustee's citation to District Judge Carter's Order Denying Motion for Leave to Appeal, entered in *Picard v. Saren Lawrence*, Adv. Pro. No. 10-04898, ECF No. 118, is equally unavailing because that Order concerned an appeal to the District Court from this Court. In that case, the Trustee was permitted by this Court to broadly pursue discovery of highly personal and confidential financial information of parties and non-parties alike, some of which was duplicative and cumulative, and a large volume of which consisted of irrelevant information. Thus, if anything, that case merely demonstrates the unfairness of permitting the Trustee to employ his limitless legal budget to continue to conceal material evidence from the Defendants.

## **II. Defendants should be granted permission to appeal the January 2, 2019 Order**

The Trustee makes four arguments as to why the January 2, 2019 Order should not be reversed.

First, the Trustee argues that the January 2, 2019 Order does not contravene the Orders of this Court. According to the Trustee, "[i]f the Court had already ordered production of 'trading records' in May of 2016, then Ms. Chaitman's August 2016 motion to compel and subsequent arbitrations would have been completely unnecessary." *Wilenitz*, ECF No. 127 at 2. In fact, this is true: if the Trustee had complied with this Court's orders and had not embarked upon a campaign to conceal material evidence, the proceedings before Judge Maas would have been unnecessary.

Starting in May 2016, this Court ordered the Trustee to produce to the Defendants all the Trading Records, *See, e.g.,* May 17, 2016 Transcript at 69:19-22 (THE COURT: "Well, if the

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Trustee has additional documents, he's got to supplement the disclosure or the production, which he does by adding them to the data room . . .").<sup>3</sup>

But the Trustee ignored this Court's order. Then, again, on June 29, 2017, this Court ordered the Trustee to produce the Trading Records. *See, e.g.*, June 29, 2017 Transcript<sup>4</sup> at 74:14-15 (there are "two orders directing you to turn over the documents"). Again, the Trustee ignored this Court's order. Thus, the Trustee's argument is simply incorrect and the Trustee does not even dispute that Judge Maas is without authority to enter orders that contravene the Orders of this Court.

Second, the Trustee again ignores the relevant issue by suggesting that Defendants have made no showing that their discovery requests are "relevant and proportional." *Wilenitz*, ECF No. 127 at 3. However, this Court obviously recognized the relevance of the Trading Records because it ordered the Trustee to produce them. Similarly, Judge Maas held that the Trading Records go to "significant" issues in the case. Given their obvious relevance, Rule 26 requires disclosure in light of the minimal to nonexistent burden that would be imposed on the Trustee by simply sharing access to an existing database and allowing Defendants' counsel to inspect the warehouses of documents which are under the Trustee's exclusive control. The Trustee has never contended that compliance with this Court's orders would be unduly burdensome and any such contention would be preposterous.

The Trustee misstates the facts in footnote 2 of his letter. We repeatedly asked the Trustee to produce all Trading Records of a whole list of firms. Instead, the Trustee simply told us how many "hits" there were but refused to produce the documents. *See, e.g.*, Ex. F to the September 20, 2018 Joint Letter to Judge Maas, which is Chaitman Decl., January 16, 2019, as Ex. 2.

Third, the Trustee argues that it does not matter whether BLMIS actually engaged in real trading for its customers because Defendants have not shown that the Trustee's efforts to identify pre-1992 trading records have been inadequate. *Wilenitz*, ECF No. 127 at 3. First of all, Defendants have sought Trading Records for the entire period from 1980 – 2008. Defendants have not limited their requests to a specific time period. Their request is co-extensive with the time period the Trustee applies to calculate net equity. Moreover, Defendants have already set forth at length on numerous occasions why the Trustee's productions have been inadequate,<sup>5</sup> and the Trustee's efforts are *per se* inadequate because they do not comply with the previous Orders of this Court requiring the Trustee to produce all Trading Records. Finally, the high relevancy of the Trading Records compels reversal. The Trustee has a mass of documents that he has refused to produce because they are inconsistent with the representations he has made to this Court, the

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<sup>3</sup> The Trustee emailed this transcript to Judge Maas on Nov. 19, 2018. The transmittal letter is attached to the Chaitman Decl., January 16, 2019 as Ex. 3. The transcript is Chaitman Decl., January 16, 2019 as Ex. 4.

<sup>4</sup> Ex. A to the September 20, 2018 Joint Letter to Judge Maas, which is Chaitman Decl., January 16, 2019 as Ex. 2.

<sup>5</sup> *See, e.g.*, Exhibit A to Defendants' November 20, 2018 Letter to Judge Maas, which is Chaitman Decl., January 16, 2019 as Ex. 8.



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January 25, 2019

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District Court, and the Second Circuit. However, there is no justification for protecting the Trustee and his counsel by allowing them to conceal material evidence.

The Court will recall that, contrary to the Trustee's continuous representations that Madoff never purchased securities with investment advisory customers' money, Madoff testified in his deposition that he maintained a portfolio of \$6 billion of T-bills that he purchased with investment advisory customers' money and that, in addition, he invested such customers' money in various other securities such as commercial paper. When I brought this fact to the Court's attention in 2018, Mr. Sheehan acknowledged the truth of this, for the first time in nine years – although he only confessed to the T-bills Madoff had purchased in 2007 – 2008. Madoff also testified concerning Mr. Dubinsky's expert report and totally destroyed Mr. Dubinsky's credibility because his report was patently false in numerous respects (despite the fact that the Trustee paid Mr. Dubinsky over \$30 million to prepare his report).

In the face of Madoff's truthful testimony, the Trustee was compelled to have new expert reports prepared. Just last week, the Trustee produced an entirely new expert report of Mr. Dubinsky and an entirely new expert report of Lisa Collura who now admits what Defendants have been alleging for years: that Madoff used investment advisory customers' money to purchase various kinds of securities; that he used investment advisory customers' money to purchase securities at brokerage accounts with Bear Stearns, Fidelity, Lehman Brothers, Morgan Stanley, Bank of New York, JPMorgan Chase and M&T Securities. Collura also admits that the investment advisory customers' money appreciated. The Expert Report of Lisa Collura, dated January 16, 2019, is annexed hereto as Ex. A with selected exhibits. *See id.*, Ex. 3. Collura admits that Madoff invested funds in the 703 Account at JPMorgan Chase. She admits that Madoff comingled funds between the investment advisory business and the proprietary trading business. *See id.*, ¶ 47, n.28, ¶ 57. And she documents the more than \$16 billion T-bills that Madoff purchased through JPMorgan Chase just in 2007 – 2008. *See id.*, Ex. 12. Thus, Defendants' previous representation that Madoff never purchased securities with investment advisory customers' money has now been proven false, and the Trustee should not be permitted to further conceal the Trading Records. Defendants are entitled to compliance with this Court's orders. And they are entitled to see all the Trading Records, not simply the ones that the Trustee has finally decided to disclose.

Fourth, there is no indication in the January 2, 2019 Order that Judge Maas considered Defendants' offer to search the Trustee's warehouses themselves rather than force the Trustee to "rummage through all of the boxes in the warehouse." January 2, 2019 Order, ECF No. 18354 at 7. Obviously, however, this would not be an undue burden when the Trustee and his law firm have been paid over \$1 billion to date and when the documents sought will prove that the Trustee has misrepresented material facts concerning Madoff's fraud from the inception of his appointment.

### **III. Conclusion**

The Trustee's misrepresentation of material facts and deliberate concealment of the Trading Records compels reversal of the January 2, 2019 Order. The public, the customers, and the courts, are entitled to the truth about Madoff's fraud. The Trustee and his counsel acted in

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contempt of this Court's orders because they have wanted to conceal the truth from the public, the customers, and the courts. It would be a disgrace to the legal system to allow the Trustee, who, with his firm, has been compensated in excess of \$1 billion, to continue to misrepresent the nature of Madoff's fraud by concealing material evidence.

Defendants are entitled to production of all of the Trading Records under the Trustee's control covering the period from 1980 – 2008.

Respectfully submitted,

/s/Helen Davis Chaitman

Helen Davis Chaitman

HDC:leb

Enclosures (as stated)

cc: Maximillian S. Shifrin, Esq. (*via email only*)  
Nicholas J. Cremona, Esq. (*via email only*)

# EXHIBIT A

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

SECURITIES INVESTOR PROTECTION  
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

Adv. Pro. No. 08-01789 (SMB)

SIPA LIQUIDATION

(Substantively Consolidated)

**EXPERT REPORT OF**  
**LISA M. COLLURA, CPA, CFE, CFF**

**Reconciliation of Cash Transactions  
for All BLMIS Customers and  
Analysis of IA Business Cash Activity**

**January 16, 2019**

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## I. PROFESSIONAL BACKGROUND

1. I am a Senior Managing Director in the Forensic and Litigation Consulting practice of FTI Consulting, Inc. ("FTI"), with 25 years of experience in accounting, auditing and litigation consulting services. I specialize in providing forensic accounting and financial fraud investigative services in connection with internal investigations on behalf of trustees, boards of directors and audit committees of companies.
2. I have extensive experience in conducting large-scale, fact-finding investigations into fraudulent financial transactions, including tracing significant flows of funds between accounts and entities. During my career at FTI, I have assisted in the investigation of several of the largest fraud cases in the United States.
3. I am a Certified Public Accountant (CPA), a Certified Fraud Examiner (CFE), a member of the American Institute of Certified Public Accountants (AICPA), and am Certified in Financial Forensics (CFF) by the AICPA. My curriculum vitae, attached as **Exhibit 1** to this report, further describes my professional credentials, experience, and qualifications, including my testimony in the last four years.

## II. SCOPE OF ASSIGNMENT

4. Bernard L. Madoff Investment Securities LLC ("BLMIS") was an investment firm owned and operated by Bernard L. Madoff ("Madoff"). On December 11, 2008, Madoff was arrested for violating multiple securities laws in connection with running a Ponzi scheme through the investment advisory business of BLMIS (the "IA Business"). On December 15, 2008, Irving H. Picard was appointed as the Trustee for the liquidation of the business of BLMIS, and Baker & Hostetler LLP was retained as his counsel. Shortly thereafter, FTI was retained by Baker & Hostetler LLP, on behalf of the Trustee, to analyze, among other things, the financial affairs of BLMIS and to assist the Trustee with the liquidation of BLMIS. As part of our engagement, FTI was tasked with the exercise of reconstructing the books and records of

BLMIS, including all records of the cash transactions related to the BLMIS IA Business customer accounts as far back as the records allow.

5. Matthew B. Greenblatt, also a Senior Managing Director at FTL, and a team of professionals working under his supervision, was specifically tasked with creating chronological listings of all cash and principal transactions, including cash deposit and withdrawal transactions, for every BLMIS customer account, as set forth more fully in the Expert Report of Matthew B. Greenblatt regarding the Methodology for the Principal Balance Calculation (the “Principal Balance Calculation Report”).

6. The sources of cash deposit and withdrawal transactions related to BLMIS customer accounts include customer statements and other relevant information available within BLMIS’s records, including Portfolio Management Reports, Portfolio Management Transaction Reports, spiral-bound notebooks, and a data table from BLMIS’s computer system referred to as the “Checkbook File,” which is the only available BLMIS record of cash transactions for the time period from December 1, 2008 through December 11, 2008. *See* Principal Balance Calculation Report for further discussion regarding these sources. For purposes of my report, I use the term “customer statements” to refer to these sources collectively.

7. I, along with a team working under my supervision, was specifically tasked with performing forensic analyses to determine the following:

- Whether the cash deposit and withdrawal transactions as reflected on the customer statements for all BLMIS customers reconciled to available BLMIS bank records;
- Whether handwritten ledgers and other documents maintained by BLMIS employees consistently reflected customer cash deposit and withdrawal transactions;
- The purpose of the activity in the primary bank account used for BLMIS customer deposits and withdrawals that I did *not* reconcile to cash transactions reflected on the BLMIS customer statements, including investments in Treasury Bills; and

- Whether interest earned on Treasury Bills purchased directly or indirectly with funds from the primary bank account used for BLMIS customer deposits and withdrawals was sufficient to pay BLMIS customer withdrawals.

8. For purposes of this report, I use the term “reconciled” to indicate when I have matched, agreed and/or determined consistency between cash deposits and withdrawals reflected on BLMIS customer statements to information or data per another source (*e.g.*, amounts on BLMIS bank records, and/or handwritten ledgers maintained by BLMIS employees).

9. FTI is being compensated at a rate of \$670 per hour for my professional time incurred in performing the work necessary to prepare this report. FTI’s fees are not contingent on the conclusions reached in this report or the outcome of the subject litigation.

### III. METHODOLOGY

10. To determine whether the cash deposit and withdrawal transactions reflected on the customer statements for all BLMIS customers reconciled to available BLMIS bank records, I, using my experience as a forensic accountant and investigator, along with my staff, first identified and gathered the relevant and available records related to the BLMIS bank accounts.

We then performed the following:

- Reviewed hundreds of thousands of pages of records related to BLMIS’s bank accounts, including monthly bank statements, cancelled checks and deposit slips, obtained from BLMIS’s files and/or produced by third-party financial institutions, which cover a ten-year period from December 1998 to December 2008;
- Analyzed close to 150,000 transactions reflected within these bank records; and
- Reconciled the cash deposit and withdrawal transactions reflected on the BLMIS customer statements to the cash transactions reported in the available BLMIS bank records.

11. Next, I reviewed available handwritten ledgers and other documents maintained by BLMIS employees to determine whether they consistently reflected customer cash deposits and



cash withdrawals for both the period when BLMIS bank records were available (*i.e.*, December 1998 – December 2008) and the period when such records were not available (*i.e.*, prior to December 1998). My team and I first identified all available handwritten documents within BLMIS's records that reflected cash activity in and out of BLMIS bank accounts. We then performed the following:

- Analyzed the handwritten documents for each month-end day during the ten-year period from December 1998 to December 2008 and reconciled the cash activity reflected on these handwritten documents to available BLMIS bank records and cash deposits and withdrawals reflected on BLMIS customer statements; and
- Analyzed the handwritten documents for each month-end day prior to December 1998, which were available back to December 1990, and reconciled BLMIS customer cash deposits and withdrawals reflected on BLMIS customer statements to the cash activity reflected on these handwritten documents.

12. Next, I examined the activity in the primary bank account used for BLMIS customer deposits and withdrawals (as further described below and defined as the "703 Account") that I did *not* reconcile to cash transactions reflected on the BLMIS customer statements, and I performed the following based on available bank records:

- Analyzed transactions relating to short-term investments made directly from the 703 Account to determine: (a) the types, amounts, and timing of these short-term investments, and (b) the related income earned on the investments;
- Analyzed other transactions in the 703 Account, including transfers to and from bank and brokerage accounts held in the name of BLMIS or Madoff, to determine: (a) the amounts and timing of the flow of funds between the 703 Account and the brokerage accounts, (b) the types, amounts, and timing of investments made from these brokerage accounts, and (c) the related income earned on investments in the brokerage accounts; and
- Determined whether these non-customer transactions were for BLMIS's cash management purposes.

13. Finally, to determine whether interest earned on Treasury Bills purchased directly or indirectly with funds from the 703 Account was sufficient to pay BLMIS customer withdrawals, I first determined the total amount of interest earned on the Treasury Bills each year during the ten-year period from December 1998 to December 2008. I then compared the annual interest amounts to the total amount of BLMIS customer withdrawals each year during the same ten-year period.

14. The documents and data that I considered in connection with this report are listed in **Exhibit 2**. I reserve the right to supplement my report based on any additional documents or information received.

#### **IV. SUMMARY OF FINDINGS AND CONCLUSIONS**

15. Based on the forensic analyses performed, as described above and throughout this report, as well as my skills, knowledge, experience, education and training that I applied to the documents and information available to me as of the date of this report, my findings and conclusions are summarized as follows:

- I reconciled 99% of the approximately 225,000 cash deposit and withdrawal transactions reflected on all BLMIS customer statements during the time period of December 1998 to December 2008 to the available BLMIS bank records for the same time period, demonstrating that the customer statements accurately reflected BLMIS customer cash transactions. The remaining 1% that I was unable to reconcile consists primarily of withdrawal transactions for which copies of the related cancelled checks were not available. Based on the results of my reconciliation of 99% of the cash transactions, I can reasonably infer that I would have been able to reconcile these withdrawal transactions had copies of the related cancelled checks been available. Further, based on my review of the activity in BLMIS bank accounts used for customer cash transactions, from December 1998 to December 2008, customer deposits were made into one bank account from which BLMIS customer withdrawals were directly or indirectly made.

- Handwritten documents maintained by BLMIS employees during the period when BLMIS bank records were available (from December 1998 to December 2008) reflected BLMIS customer cash deposits and withdrawals, which I reconciled to both BLMIS bank records and BLMIS customer statements. Of the approximately 4,700 cash deposit and cash withdrawal transactions dated month-end between December 1998 and December 2008 reflected on BLMIS customer statements, I reconciled over 99% to the handwritten documents and the BLMIS bank records. Therefore, I can reasonably conclude that these handwritten documents can be relied upon as an indication of BLMIS customer cash activity in the absence of BLMIS bank records during the period prior to December 1998.
- Handwritten documents between December 14, 1990 and November 1998 reflected a consistent pattern of cash activity where BLMIS customer cash deposits were reflected on the handwritten documents as deposits into bank accounts used by the IA Business for cash transactions with customers, and customer cash withdrawals were reflected on the handwritten documents as outflows from these same bank accounts. Of the approximately 5,000 cash deposit and cash withdrawal transactions dated month-end between December 1990 and November 1998 reflected on BLMIS customer statements, I reconciled approximately 94% to the handwritten documents.
- The activity in the 703 Account that I did not reconcile to BLMIS customer cash transactions consisted of investing activity for BLMIS's cash management purposes, including purchases and sales of Treasury Bills, directly from the 703 Account and through brokerage accounts.
- From 1999 to 2008, the annual interest earned on Treasury Bills purchased directly and indirectly with funds from the 703 Account ranged from 0% to 1% of annual withdrawals from BLMIS customer accounts and was therefore insufficient to pay BLMIS customer withdrawals.

## V. RECONCILIATION OF CASH TRANSACTIONS FOR ALL BLMIS CUSTOMERS

### A. OVERVIEW

16. As set forth in the Principal Balance Calculation Report, a team from FTI working under Mr. Greenblatt's supervision created chronological listings of all cash and principal transactions, including cash deposit and withdrawal transactions, for every BLMIS customer account. I was tasked with reconciling the customer cash deposit and withdrawal transactions to available BLMIS bank records to assist in the determination of whether the cash transactions reflected on the customer statements for all BLMIS customers were fairly and accurately represented (the "Global Reconciliation").

### B. BLMIS BANK ACCOUNTS

17. My team and I reviewed available bank records for more than 90 bank and brokerage accounts in the name of either BLMIS or Madoff,<sup>1</sup> and found that, primarily, the following three bank accounts were used by BLMIS for customer deposits and withdrawals during at least the ten-year period from December 1998 to December 2008:<sup>2</sup>

- JPMorgan Chase account #xxxxx1703 (the "703 Account")<sup>3</sup>
- JPMorgan Chase account #xxxxxxxxx1509 (the "509 Account")
- Bankers Trust account #xx-xx0-599 (the "BT Account")

18. Records for these three accounts consist of monthly bank statements, copies of deposited checks, deposit slips, and cancelled checks. Records related to the 703 Account and the 509 Account were available from December 1998 to December 2008 and were obtained from

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<sup>1</sup> See **Exhibit 3** for a listing of known bank accounts held by BLMIS and/or Madoff.

<sup>2</sup> Between January 2006 and April 2006, there were four customer withdrawal transactions totaling \$262,000,000 that were paid from account #xxx-xxx6-621 held at the Bank of New York (the "BONY 621 Account"). The BONY 621 Account was one of the primary operating bank accounts used by BLMIS's proprietary trading and market making businesses (the "Proprietary Trading Business"). In June 2006, there were two transfers totaling \$261,816,950 from the 703 Account to the BONY 621 Account to reimburse the BONY 621 Account for funding the withdrawals to customers.

<sup>3</sup> Personal Identifying Information has been redacted throughout this report and the accompanying exhibits.

BLMIS's files as well as from JPMorgan Chase & Co. ("JPMC").<sup>4</sup> In addition to hard copy documents, JPMC produced an electronic file that provides details of wire transfers in and out of the 703 Account from January 1, 2002 to December 11, 2008 (the "JPMC Wire File").<sup>5</sup> Records related to the BT Account were available from December 1998 to May 1999 and were obtained from BLMIS's files.<sup>6</sup>

19. In the aggregate, FTI had available bank records related to the BLMIS bank accounts used for customer deposits and withdrawals for a ten-year period from December 1998 to December 2008 (the "10 Year Period"). To assist in our analysis of these bank records, which included copies of monthly bank statements and cancelled checks, we captured the transaction information from these records and converted the information into an electronic format through the use of a combination of Optical Character Recognition (OCR) software and manual entry. This electronic data, which accurately reflects the underlying records, became the basis for our reconciliation of the cash transactions reported in the BLMIS bank records to the cash deposits and withdrawals reflected on BLMIS customer statements.

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<sup>4</sup> The October 1999 bank statement for the 509 Account could not be located. However, I was able to use other available documents, such as the 703 Account statements, to estimate the activity in the 509 Account during October 1999. In addition, there is activity reflected on the monthly bank statements for the 703 Account and 509 Account for which corresponding copies of deposited checks, deposit slips and/or cancelled checks were missing from the documents produced by JPMC and/or could not be located in BLMIS's records. As reflected in my summary of findings and other results described throughout my report, these missing documents had a minimal impact on my overall analysis and reconciliation.

<sup>5</sup> This file was missing data for transactions dated December 11, 2004 to December 31, 2004. However, I was able to use other available documents, such as the 703 Account statements, to obtain the necessary information to complete our analysis and reconciliation.

<sup>6</sup> Statements for June through August 1999, October 1999, December 1999 and July 2000 for the BT Account were also found in BLMIS's records. However, May 1999 appears to be the last month of significant activity in the BT Account. There was no activity in the account during the months of June through August 1999, and the statements for these months showed an ending balance of \$26,523. In October 1999, the only transaction in the account was to transfer the \$26,523 remaining balance to the 703 Account and zero out the BT Account. The December 1999 and July 2000 statements for the BT Account both showed a zero balance.

### The 703 Account

20. Based on my review of the available BLMIS bank records, I determined that the 703 Account was the primary bank account used for BLMIS customer deposits and withdrawals.<sup>7</sup> My team and I reviewed and analyzed every one of the transactions reported in the available monthly bank statements for the 703 Account from December 1998 to December 2008 to determine, among other things, whether the transactions were related to a BLMIS customer deposit or withdrawal.

21. The results of my analysis of the activity in the 703 Account from the available bank records for December 1998 to December 2008 are set forth in an Excel spreadsheet titled “JPMC 703 Account Activity – December 1998 to December 2008” which is attached as **Exhibit 4**.

22. In conducting our reconciliation of the cash transactions reported in the 703 Account bank records to the cash transactions reflected on the BLMIS customer statements, we first matched transactions based on the transaction date and amount, but also manually reviewed thousands of transactions to confirm our results. In addition, there were instances when we reconciled multiple transactions on the BLMIS customer statements to a single transaction on the BLMIS bank statements. For example, a deposit into the 703 Account that related to multiple BLMIS customers appeared as one transaction on the monthly bank statement for the 703 Account. In that case, we reconciled the 703 Account transaction to a combination of multiple BLMIS customer transactions.<sup>8</sup>

23. FTI assigned a unique identification number to each of the transactions reported on the available 703 Account bank statements. *See* “703 ID” in the first column of the detail tab of Excel spreadsheet “JPMC 703 Account Activity – December 1998 to December 2008” (attached as **Exhibit 4**). FTI also assigned a unique identification number to each one of the customer deposit and withdrawal transactions for every BLMIS customer account. *See* “CM ID” in a

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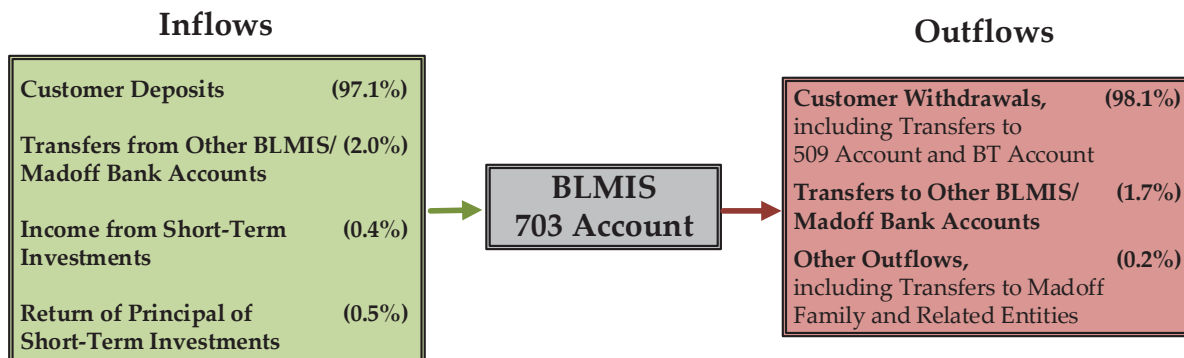
<sup>7</sup> Based on available bank statements, the 703 Account was held in the name of Bernard L. Madoff until September 2002, when the name on the 703 Account was changed to Bernard L. Madoff Investment Securities.

<sup>8</sup> As another example, BLMIS withheld certain amounts from foreign account holders and made payments to the Internal Revenue Service on behalf of these customers. In these cases, we reconciled one payment from the 703 Account to multiple related transactions per the BLMIS customer statements.

separate column of the detail tab of **Exhibit 4**. Once a specific transaction reported in a 703 Account statement was matched to a specific customer deposit or withdrawal transaction reflected on the BLMIS customer statements, we recorded the corresponding unique CM ID in the respective column of **Exhibit 4**. This matching formed a link between the cash transactions per the bank records and the cash transactions per the customer statements. This link ensured that no two customer cash transactions were incorrectly matched to the same cash transaction per the bank records or vice versa.

24. Based on my review of the activity in the 703 Account from December 1998 to December 2008, I determined that approximately 97% of the inflows into the account during this period consisted of customer deposits and approximately 98% of the outflows from this account during this period consisted of customer withdrawals. **Figure 1** below is a flowchart summarizing the activity in the 703 Account from December 1998 to December 2008. The results of my analysis support that from December 1998 to December 2008, BLMIS customer deposits were made into one account - the 703 Account - an account from which BLMIS customer withdrawals were made. See **Section VII** below for further discussion of the remaining activity in the 703 Account (*i.e.*, other than customer deposits or withdrawals).

**Figure 1**  
**Flowchart of Activity in the 703 Account**  
**December 1998 – December 2008**





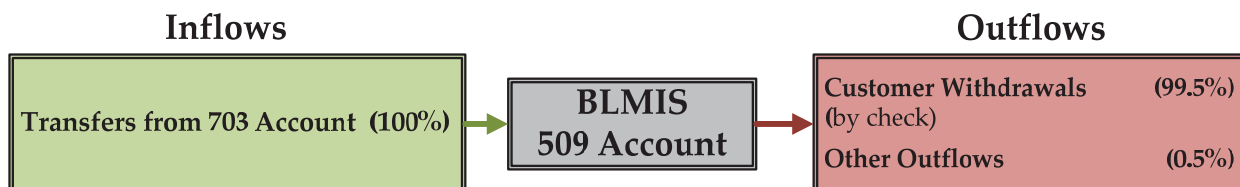
### The 509 Account

25. Based on my review of the available bank records related to the 509 Account, I determined that the 509 Account was a disbursement account funded by the 703 Account.<sup>9</sup> On a daily basis, funds were transferred from the 703 Account to the 509 Account to cover the total amount of checks clearing the 509 Account on that day. Thus, from December 1998 to December 2008, the inflows into the 509 Account consisted solely of transfers from the 703 Account, and the outflows from the 509 Account were solely in the form of checks.

26. My team and I performed an analysis of the activity in the 509 Account, similar to the analysis we performed with respect to the 703 Account, to determine whether the outflows from the 509 Account were related to BLMIS customer withdrawals. However, in this case, our analysis relied more heavily on our review of the cancelled checks because the statements themselves lacked the necessary detail. The results of my analysis of the activity in the 509 Account from the available bank records for December 1998 to December 2008 are set forth in an Excel spreadsheet titled “JPMC 509 Account Activity – December 1998 to December 2008” which is attached as **Exhibit 5**.

27. Based on my review of the activity in the 509 Account from December 1998 to December 2008, I determined that 100% of the inflows into the 509 Account were transfers from the 703 Account, the account consisting primarily of customer deposits, and over 99% of the checks written from the 509 Account consisted of customer withdrawals. **Figure 2** below is a flowchart summarizing the activity in the BLMIS 509 Account.

**Figure 2**  
**Flowchart of Activity in the 509 Account**  
**December 1998 – December 2008**



<sup>9</sup> Based on available bank statements, the 509 Account was held in the name of Bernard L. Madoff until September 2002, when the name on the 509 Account was changed to Bernard L. Madoff Investment Securities.



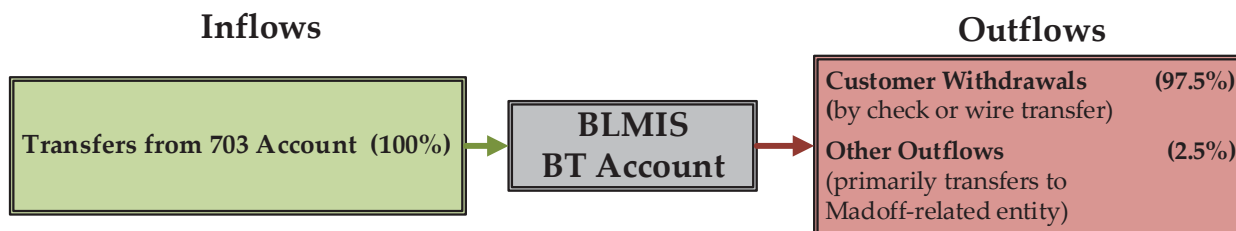
### The BT Account

28. Based on my review of the available bank records related to the BT Account, from at least December 1998 through May 1999, the BT Account was also funded by transfers from the 703 Account. Outflows from the BT Account were in the form of both checks and wire transfers.

29. My team and I performed a reconciliation analysis of the activity in the BT Account, similar to those described above, to determine whether the outflows from the BT Account were related to BLMIS customer withdrawals. The results of my analysis of the activity in the BT Account from the available bank records for December 1998 to May 1999 are set forth in an Excel spreadsheet titled “BT 599 Account Activity – December 1998 to May 1999” which is attached as **Exhibit 6**.

30. Based on my review of the activity in the BT Account during this period, I determined that 100% of the inflows into the BT Account were transfers from the 703 Account, the account consisting primarily of customer deposits, and that over 97% of the outflows from the BT Account were related to customer withdrawals. **Figure 3** below is a flowchart summarizing the activity in the BT Account:

**Figure 3**  
**Flowchart of Activity in the BT Account**  
**December 1998 – May 1999**



### C. RESULTS OF RECONCILIATION

31. I reconciled 99% of the approximately 225,000 cash deposit and withdrawal transactions reflected on all BLMIS customer statements during the time period of December 1998 to December 2008 to the available BLMIS bank records for the same time period,

demonstrating that the customer statements accurately reflected BLMIS customer cash transactions. The majority of the remaining 1%, or approximately 2,200 transactions, consist primarily of withdrawal transactions for which copies of the related cancelled checks were not available. Based on the results of my reconciliation of 99% of the cash transactions, I can reasonably infer that I would have been able to reconcile these withdrawal transactions had the related cancelled checks been available. Only 13 transactions of this remaining 1% (representing less than 0.006% of the approximately 225,000 cash transactions) were reflected on the customer statements, but could not be reconciled to available BLMIS bank records.

32. Based on my review of the activity in the three BLMIS bank accounts used for customer cash transactions from December 1998 to December 2008, customer deposits were made into one account – the 703 Account – from which BLMIS customer withdrawals were made directly, or indirectly through the 509 Account or the BT Account. Further, I saw no disbursement of funds for the purchase of stocks or equities on behalf of customers of the IA Business, nor did I see any receipt of funds from the sale of stocks or equities. Instead, I saw billions of dollars of inflows from customers depositing funds into the IA Business and billions of dollars of outflows to customers in the form of withdrawals.

## VI. ANALYSIS OF HANDWRITTEN LEDGERS AND OTHER DOCUMENTS

### A. OVERVIEW

33. My team and I identified all available handwritten documents within BLMIS's records that reflected cash activity in and out of BLMIS bank accounts, including BLMIS customer cash deposits and withdrawals. We identified two types of handwritten documents:

- **Handwritten Ledgers** – the Handwritten Ledgers contained multiple days' worth of activity on a single page, with the specific activity from each day handwritten on one line. We identified Handwritten Ledgers in BLMIS's records that covered an

18-year period from December 14, 1990 through December 11, 2008.<sup>10</sup> Figure 4 below is an example of a Handwritten Ledger for days in June and July 2003. See also Exhibit 7.

Figure 4  
 Example of a Handwritten Ledger

CHASE	DA	COM					
CHK	WIRE	TRANS	NY	DEPOSIT	BALANCE	E BALANCE	COMMENT
(1899975.56)	-1799999.00	150000.00	40000.00	20000.00	20000.00	6/16 314139733.11	
(330000.00)	-300000.00	30000.00	60000.00	562011.75	+390000.00	6/17 317627505.39	7-600
(1579935.00)	-72000.00	72000.00	50000.00	372107.28		6/18 313857522.91	
(328000.00)	-305000.00	10000.00	20000.00	1190000.00		6/19 316608002.91	
(270441.00)	-40000.00	40000.00	60000.00	654591.00	+100000.00	6/20 291388009.00	
(423500.00)	-131000.00	131000.00	30000.00	50000.00	30000.00	6/23 296536281.35	
(20000.00)	-20000.00	20000.00	30000.00	419788.58	-2244008.72	6/24 294734256.38	
(19112446.43)	-1000000.00	1000000.00	70000.00	70000.00		6/25 261351809.95	
(1251557.44)	-1000000.00	1000000.00	291642.98	+50000.00		6/26 300929895.29	
(121217.46)	-1000000.00	1000000.00	1000000.00	1000000.00		6/27 375722404.13	
(1220376.00)	-1000000.00	1000000.00	1000000.00	1000000.00		6/30 350233153.38	
(550000.00)	-1000000.00	1000000.00	1000000.00	1000000.00		7/1 113669026.51	
(1140000.00)	-1000000.00	1000000.00	1000000.00	1000000.00		7/2 110496842.64	
(1139999.00)	-1000000.00	1000000.00	1000000.00	1000000.00		7/3 140041336.68	
(1100000.00)	-1000000.00	1000000.00	1000000.00	1000000.00		7/7 163254892.69	

- **Daily Sheets** – the Daily Sheets contained information similar to the information on the Handwritten Ledgers, however, on the Daily Sheets, the activity for a given day was included on a separate page and the amounts were rounded to the nearest thousand. We identified Daily Sheets in BLMIS's records that covered nearly a 15-

<sup>10</sup> There were no missing Handwritten Ledgers during this 18-year period. Beginning in 2003, two versions of Handwritten Ledgers existed in BLMIS's records for many of the month-end periods under review. I reviewed and analyzed all available versions of the Handwritten Ledgers.

year period from April 4, 1994 through December 11, 2008.<sup>11</sup> Figure 5 below are examples of Daily Sheets. See also Exhibit 8.1 for an example of Daily Sheets pre-November 1998 and Exhibit 8.2 for an example of a Daily Sheet post-November 1998.<sup>12</sup>

**Figure 5**  
**Examples of Daily Sheets**

Pre-November 1998

BERNARD L. MADOFF Investment Securities 885 Third Avenue New York, NY 10022-4834	
3-29-96	
CHEMICAL BANK	
+ 83710	BAL 3-28
- 65	cks out
+ 20	WIRE IN - WESTWOOD
+ 200	" " - PRIMO CLB
+ 500	" " - N SACHS
+ 1100	" " - SCHUPKE
+ 2000	" " - YESOD
+ 3000	" " - BPI MULTADVISERS
+ 1762	My Deposit 200H CM 500H CM
- 14200	Tony Out 29HARD 75HAB
- 27300	WIRE Out - Bankers
- 32800	" " - BK of NY
- 10000	" " - CREDIT LYONS
+ 15000	N.L. Deposit
+ 22927	
65000.00 MAILED Out of STATE	
Giving you 16 ml 4-1	

Post-November 1998

C.M. 6-30-03		C.M. - WIRE ACTIVITY	
+ 375722	BALANCE	✓ 23800	WIRE out - BNP
- 550	CHECKS OUT *	✓ 7265	WIRE out - BNP
- 1780	CHECKS OUT **	✓ 13000	WIRE out - TREND
- 0	N.L. DEPOSIT	✓ 3000	WIRE out - RPP
- 0	TRANS	✓ 3000	WIRE out - STERLING
- 26959	NET WIRES ****	✓ 500	WIRE out - BORADU
+ 1460	MY DEPOSIT	✓ 466	WIRE IN - Argenta
+ 2340	cks Rtn	✓ 520	WIRE IN - Turbo
+ 350233	TOTAL BALANCE	✓ 3650	WIRE IN - STERLING
* HAND DELIVER N.L.	550000 -	✓ 17000	WIRE IN - M-INVT
DRAWING N.L.	1465040 - 7/1	- 26959	NET WIRES **** ✓
	110000 - 7/1	WIRING OUT	25H 7/1 MARIN
DRAWING SPECIAL	250ml 7/1	WIRING OUT	150850 - 7/1 MARIN
	PICORAL	WIRING OUT	1852, 488.57 7/1 5ml
MAILED IN STATE	1427501 -	WIRING OUT	2ml 7/1 THYBO
MAILED OUT STATE	352875 -	WIRING OUT	1130,000 - 7/1 BNP
GIVING YOU N.L.	6	WIRING OUT	350 M - 7/1 6HARD
		WIRING OUT	1ml - 7/1 Klem
		WIRING OUT	500H - 7/1 POND
		WIRING OUT	
		WIRING OUT	
		WIRING OUT	

MADTSS00244687

MADTSS01309801

34. Each Handwritten Ledger and Daily Sheet identified the banking institution to which the handwritten document related, including JPMorgan Chase<sup>13</sup> and Bankers Trust,<sup>14</sup> the

<sup>11</sup> Daily Sheets for only four business days were missing across this nearly 15-year time period: 9/28/1995, 1/12/1998, 5/11/1998, and 8/15/2003.

<sup>12</sup> The Daily Sheets were completely handwritten until mid-November 1998 when the BLMIS employees began using a pre-printed template.

<sup>13</sup> Referred to on the handwritten documents as predecessor banks to JPMorgan Chase, including "MH" (for Manufacturers Hanover), "Chemical" (for Chemical Bank), "C.M." (for Chase Manhattan), or "Chase."

<sup>14</sup> Referred to on the handwritten documents as "B.T." or "Bankers."

two banking institutions used by the IA Business for cash transactions with customers. I performed the following related to these handwritten documents:

- Analyzed month-end Handwritten Ledgers and month-end Daily Sheets for the 10 Year Period and reconciled the activity reflected on these documents to BLMIS bank records and BLMIS customer deposits and withdrawals with month-end dates reflected on customer statements,<sup>15</sup> to determine the reliability of these documents during the period prior to December 1998 (the “Pre-10 Year Period”) when BLMIS bank records were not available.
- Analyzed month-end Handwritten Ledgers and month-end Daily Sheets for the Pre-10 Year Period and reconciled BLMIS customer deposits and withdrawals with month-end dates reflected on customer statements to the cash activity reflected on these handwritten documents,<sup>16</sup> to determine if these handwritten documents consistently reflected customer cash deposits and withdrawals.

B. ANALYSIS OF HANDWRITTEN DOCUMENTS IN THE 10 YEAR PERIOD

35. My team and I analyzed the activity reflected on the month-end Handwritten Ledgers and month-end Daily Sheets during the 10 Year Period and reconciled this activity to BLMIS bank records and BLMIS customer cash transactions reflected on customer statements. During the 10 Year Period, the activity on both the Handwritten Ledgers and Daily Sheets was primarily related to JPMorgan Chase. There were also documents reflecting activity for Bankers Trust and Bank of New York in December 1998 and early 1999. The following

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<sup>15</sup> The month-end documents consisted of 128 Handwritten Ledgers and 128 Daily Sheets from December 1998 to November 2008. In addition, when applicable, we analyzed the handwritten documents, bank records and customer statements for the days before or after the month-end date being analyzed, or on a date that was identified in the transaction description as reflected on the BLMIS customer statements.

<sup>16</sup> These month-end documents consisted of 162 Handwritten Ledgers and 162 Daily Sheets from April 1994 to November 1998 and 66 Handwritten Ledgers from December 1990 to March 1994. Again, as noted above, when applicable, we analyzed the handwritten documents and customer statements for the days before or after the month-end date being analyzed, or on a date that was identified in the transaction description as reflected on the BLMIS customer statements.

categories of cash activity for a given day were included in both the Handwritten Ledgers and Daily Sheets (with some variations in column headings or line items):

- “Checks Out” – customer withdrawals via check (separately for the 703 Account, the 509 Account, and when applicable, the BT Account);
- “My Deposits” – customer deposits via check (into the 703 Account);
- “Wires” – each wire transfer was listed separately, with a BLMIS customer name, or abbreviated name, noted next to or near the amount (703 Account and BT Account);
- “Tony In” / “Tony Out” – increases or decreases in loan balances;<sup>17</sup>
- “Trans” – transfers between banking institutions;<sup>18</sup>
- Check Returns, Stop Payments; and
- Balance – running balance on the Handwritten Ledgers and daily beginning and ending balance on the Daily Sheets.

36. I reconciled customer cash activity reflected in the categories listed above to BLMIS bank records and customer cash activity reflected on BLMIS customer statements.<sup>19</sup> Of the approximately 4,700 cash deposit and cash withdrawal transactions dated month-end between December 1998 and December 2008 reflected on BLMIS customer statements, I reconciled over 99% to both the handwritten documents and the BLMIS bank records. Therefore, I can reasonably conclude that these handwritten documents can be relied upon as an indication of BLMIS customer cash activity in the absence of BLMIS bank records during the period prior to December 1998. Further, based on my analysis of these documents, I found that the information contained on the Handwritten Ledgers was consistent with the information contained on the Daily Sheets.<sup>20</sup>

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<sup>17</sup> From December 1998 through March 1999.

<sup>18</sup> From December 1998 through April 1999.

<sup>19</sup> There were instances when we reconciled multiple transactions reflected in the BLMIS bank records and/or BLMIS customer statements to a single amount reflected on the Handwritten Ledgers and/or Daily Sheets. For example, customer cash withdrawals written via check from the 509 Account that related to cash withdrawals from multiple BLMIS customer accounts appeared as one amount on the Handwritten Ledgers. In this case, we reconciled the amount of “Checks Out” to a combination of multiple BLMIS customer cash withdrawal transactions.

<sup>20</sup> See also trial testimony of Winifred Jackson, 1105:13 – 1105:16, *United States v. Bonventre et al.*, No. 10 Cr. 228 (LTS) (S.D.N.Y.).



37. In addition, I noted that non-customer related transactions were reflected on the handwritten documents, including, for example, transfers to/from other BLMIS or Madoff bank accounts. I reconciled this activity to the BLMIS bank records. I also noted certain transactions reflected in the BLMIS bank records that were not included in the handwritten documents. These transactions included bank charges, fees or other bank adjustments, and transfers from the 703 Account to the Proprietary Trading Business.

38. See **Exhibit 9** for an example of my analysis and reconciliation of the handwritten documents for one month-end during the 10 Year Period.

C. ANALYSIS OF HANDWRITTEN DOCUMENTS IN THE PRE-10 YEAR PERIOD

39. My team and I also analyzed the activity reflected on the month-end Handwritten Ledgers and month-end Daily Sheets during the Pre-10 Year Period. From April 1994 through November 1998, we compared the month-end cash deposits and withdrawals reflected on BLMIS customer statements to month-end activity on the Handwritten Ledgers and Daily Sheets. From December 1990 through March 1994, we compared the month-end cash deposits and withdrawals reflected on BLMIS customer statements to month-end activity on the Handwritten Ledgers (as the Daily Sheets were not available during this time period). See **Exhibit 10** for an example of my analysis and reconciliation of the handwritten documents for one month-end during the Pre-10 Year Period.

40. Based on my analysis of month-end dates, the handwritten documents in the Pre-10 Year Period reflected similar categories of cash activity as described above in the section regarding my analysis of the 10 Year Period. More specifically, in the Pre-10 Year Period, I found a consistent pattern of cash activity where BLMIS customer cash deposits were reflected on the handwritten documents as deposits into bank accounts used by the IA Business for cash transactions with customers (*i.e.*, accounts at JPMorgan Chase and Bankers Trust), and customer cash withdrawals were reflected on the handwritten documents as outflows from these same bank accounts. Of the approximately 5,000 cash deposit and cash withdrawal

transactions dated month-end between December 1990 and November 1998 reflected on BLMIS customer statements, I reconciled approximately 94% to the handwritten documents.<sup>21</sup>

41. I also reviewed handwritten notebooks maintained by BLMIS employees that included notes and instructions on various topics, including, but not limited to, how to “Write your check card,” which appears to be detailed instructions on preparing the Handwritten Ledgers. One of these notebooks contained the date “8-1-83” on the cover.<sup>22</sup> Based on my review, the step-by-step instructions followed the columns and information contained on the available Handwritten Ledgers.

42. BLMIS employees used the balance reflected on the Handwritten Ledgers for the JPMorgan Chase account to perform the monthly bank reconciliation of the balance in the 703 Account, referred to in BLMIS’s records as “Bank Reconcilements.” Dan Bonventre, who, along with Ruth Madoff, was responsible for the reconciliation of the balance in the 703 Account,<sup>23</sup> stated in his criminal trial testimony that “Jodi kept cash figures on index cards [*i.e.*, the Handwritten Ledgers] and ... when it was completed, [I] would go downstairs and take a look at her cards just to make sure that the balance she showed on the card was the same as the one that we were using to do this reconciliation [of the 703 Account].”<sup>24</sup> Based on my review of the available Bank Reconcilements for months in the Pre-10 Year Period (available back to January 1995), these documents reconciled “Our Balance,” which agreed to the balance reflected on the Handwritten Ledgers, to the “Bank Balance,” which agreed to the 703 Account balance per available bank reports.

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<sup>21</sup> Compared to the 10 Year Period, I noted in the Pre-10 Year Period more instances of BLMIS customer cash transactions not reflected on the handwritten documents. More specifically, I identified customer cash withdrawals dated month-end totaling approximately \$112 million that were missing from the month-end handwritten documents in the Pre-10 Year Period. Of this total, \$106 million, or approximately 95%, related to cash withdrawals from two BLMIS customer accounts – 1L0027 held by NORMAN F LEVY and 1FN007 held by BANQUE FINAMA. Similarly, I identified customer cash deposits dated month-end totaling approximately \$25 million that were missing from the month-end handwritten documents in the Pre-10 Year Period. Of this total, \$12 million, or close to 50%, related to cash deposits in 1L0027 held by NORMAN LEVY.

<sup>22</sup> See MADTSS00976520 – MADTSS00976598.

<sup>23</sup> See trial testimony of Daniel Bonventre, 9558:16 – 9559:6; 9830:16 – 9830:21. See also trial testimony of Frank DiPascali, 4964:1 – 4964:2.

<sup>24</sup> See trial testimony of Daniel Bonventre, 9565:18 – 9566:1. See also trial testimony of Daniel Bonventre, 10079:2 – 10079:6.



D. RESULTS OF ANALYSIS

43. Based on my review and analysis of the month-end Handwritten Ledgers and month-end Daily Sheets during the 10 Year Period, I found that these documents reflected BLMIS customer cash deposits and cash withdrawals, which I reconciled to both BLMIS bank records and BLMIS customer statements. Therefore, I can reasonably conclude that these handwritten documents can be relied upon as an indication of BLMIS customer cash activity in the absence of BLMIS bank records during the Pre-10 Year Period.

44. Based on my review and analysis of the handwritten documents for month-ends in the Pre-10 Year period back to December 14, 1990, I found a consistent pattern of cash activity where BLMIS customer cash deposits were reflected on the handwritten documents as deposits into bank accounts used by the IA Business for cash transactions with customers, and customer cash withdrawals were reflected on the handwritten documents as outflows from these same bank accounts. This customer cash activity is consistent with the activity in the 10 Year Period. Also consistent with the 10 Year Period, I saw no disbursement of funds for the purchase of stocks or equities on behalf of customers of the IA Business, nor did I see any receipt of funds from the sale of stocks or equities reflected on the month-end handwritten documents that I analyzed from the Pre-10 Year Period.

VII. ANALYSIS OF NON-CUSTOMER ACTIVITY IN THE 703 ACCOUNT

A. OVERVIEW

45. As noted above, **Exhibit 4** to this report sets forth the results of my analysis of the activity in the 703 Account based on available bank records for the 10 Year Period, defined above as the period December 1998 to December 2008. **Exhibit 4** includes a summary of the 703 Account activity which separates the activity into three categories: 1) Customer Transactions, 2) Investment Flows, and 3) Other Transactions.

46. My Global Reconciliation, as described in **Section V** above, covers the first category – Customer Transactions. This section of my report will address the other two categories – Investment Flows and Other Transactions. Specifically, I was asked to identify and analyze

this remaining activity in the 703 Account that I did not reconcile to BLMIS customer cash deposits or withdrawals, to determine whether this activity was for BLMIS's cash management purposes.<sup>25</sup> To do this, I performed the following:

- Analyzed transactions relating to short-term investments made directly from the 703 Account to determine: (a) the types, amounts, and timing of these short-term investments, and (b) the related income earned on the investments; and
- Analyzed other transactions in the 703 Account, including transfers to and from bank and brokerage accounts held in the name of BLMIS or Madoff, to determine: (a) the amounts and timing of the flow of funds between the 703 Account and the brokerage accounts, (b) the types, amounts, and timing of investments made from these brokerage accounts, and (c) the related income earned on investments in the brokerage accounts.

**B. SHORT-TERM INVESTING ACTIVITY IN THE 703 ACCOUNT**

47. As indicated in **Figure 1** in **Section V** above, 0.4% of the inflows into the 703 Account during the 10 Year Period was income from short-term investments made directly from the 703 Account. BLMIS invested excess cash in the 703 Account on a regular basis, to earn interest rather than having excess cash sit idle.<sup>26</sup> The types of investments made from the 703 Account, as described further below and as summarized on **Exhibit 11**, are short-term, highly liquid, and low-risk investments.<sup>27</sup> The activity described below represents different types of investments used to earn interest on excess cash and supports that the short-term investments made from the 703 Account were made for BLMIS's cash management purposes and not on behalf of any individual BLMIS customer.<sup>28</sup>

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<sup>25</sup> For purposes of my report, cash management refers to managing excess cash in the 703 Account by investing funds to earn interest, while maintaining liquidity for when funds are needed.

<sup>26</sup> See also trial testimony of Walter Tiletnick, 3604:19 – 3606:22.

<sup>27</sup> See also **Exhibit 17** for a schedule of the combined IA Business monthly cash and investment balances. This exhibit also includes the monthly amount of net customer cash deposits and withdrawals.

<sup>28</sup> Between December 1998 and March 2005, transfers from the 703 Account to the Proprietary Trading Business equaled, or approximated, the interest earned on short-term investments in the 703 Account.

### **Overnight Sweeps**

48. An overnight sweep generally occurs for amounts that exceed a certain level in a bank account. Excess amounts in a bank account get swept into a higher interest-earning investment at the close of each business day. Between February 2002 and December 2008, there were overnight sweeps from the 703 Account on a daily basis, and contained "OVERNIGHT", "SWEEP" and/or "END-OF-DAY" in the transaction description. The amount swept overnight was transferred back into the 703 Account the next day along with interest that was earned overnight.

### **Overnight Deposits**

49. An overnight deposit is another means by which excess cash in a bank account is invested. An overnight deposit is a short-term account that earns a fixed interest rate for a one day term. Between December 1998 and December 2008, there were overnight deposits from the 703 Account on a daily basis, and contained "NASSAU DEPOSIT TAKEN" or "JPMORGAN CHASE & CO DEP TAKEN" in the transaction description. The amount of the prior business day's deposit plus interest earned was transferred back into the 703 Account the next day.

### **Commercial Paper**

50. Commercial paper is another short-term investment option to invest excess cash in a bank account. Commercial paper is an unsecured investment that typically matures within 30 days or less. Between December 1998 and February 2006, there were purchases of commercial paper from the 703 Account that matured within 1 to 7 days and contained "PURCH OF/SALE OF CHEM COMM PAPER" or "PURH OF/SALE OF JPMORGAN CHASE CP" in the transaction description. When the commercial paper matured, the amount of the original investment was transferred back into the 703 Account along with interest that was earned on the short-term investment.

### Certificates of Deposit

51. There were two other types of short-term investments that I have categorized as Certificates of Deposit (CDs) for purposes of summarizing the activity in the 703 Account, as shown on **Exhibit 4**.<sup>29</sup> Generally, CDs refer to time deposits with a bank.

- Between December 1998 and September 2005, there were investments of funds in the 703 Account with a reference to a “PURCHASE”, “MATURITY” and “INTEREST” by “TICKET” number. These short-term investments were held for 6 to 90 days. When the investments matured, the amount of the corresponding purchase (matched by ticket number) was transferred back into the 703 Account along with interest that was earned during the time the amount was invested (again matched by ticket number).
- Between August 2006 and August 2008, there were investments of funds in the 703 Account with references in the transaction description to “BOOK TRANSFER DEBIT A/C: D323522B45.” These short-term investments were held for 6 to 28 days. When the investment matured, the amount of the original investment plus interest earned was transferred back into the 703 Account. The amounts invested in this type of short-term investment between August 2006 and August 2008 were close to \$1 billion to over \$3 billion. During this same time period, customer cash deposits were exceeding customer cash withdrawals, contributing to excess cash in the 703 Account, further supporting the use of these short-term investments for cash management purposes.<sup>30</sup>

### Treasury Bills

52. Consistent with the other short-term investments described above, excess cash from the 703 Account was invested in Treasury Bills.<sup>31</sup> The majority of the investments in Treasury

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<sup>29</sup> See trial testimony of Frank DiPascali, 4960:15 – 4961:13. See also MADTSS01318062.

<sup>30</sup> See **Exhibit 17**.

<sup>31</sup> See trial testimony of Frank DiPascali, 4931:12 – 4931:23.

Bills made directly from the 703 Account occurred between March 2007 and August 2008 - a time period when customer cash deposits were exceeding customer cash withdrawals, contributing to excess cash in the 703 Account.<sup>32</sup>

53. Treasury Bills are low-risk, highly liquid investments that are easily converted to cash. Investments in Treasury Bills were made via transfers from the 703 Account to a broker, National Financial Services Corp. ("NFS"). NFS would then deliver the Treasury Bills to a custody account held at JPMorgan Chase by BLMIS ("JPMC G 13414 Account"). When the Treasury Bills held in BLMIS's JPMC G 13414 Account were sold or redeemed, the cash proceeds from the sale or redemption of the Treasury Bills were transferred from NFS to the 703 Account.

54. Treasury Bills purchased from the 703 Account were held for periods ranging from six days to four and a half months. Through September 2008, Treasury Bills purchased from the 703 Account were held to maturity, rather than being sold early. Beginning in October 2008, when customer withdrawals were exceeding customer deposits and BLMIS had an increasing need for cash, Treasury Bills purchased from the 703 Account were sold prior to maturity, further supporting the use of Treasury Bills as a cash management tool by BLMIS.

55. Approximately \$110 million of earnings on Treasury Bills held in the JPMC G 13414 Account (*i.e.*, the difference between the purchase price of the Treasury Bills and the proceeds received when redeemed or sold) was received in the 703 Account between June 2007 and November 2008. *See Exhibit 12* for the detail of the purchases and sales/redemptions of Treasury Bills held in the JPMC G 13414 Account, including the interest earned on each sale.

### C. ACTIVITY IN BROKERAGE ACCOUNTS

56. In addition to the short-term investments made directly from the 703 Account as described above, BLMIS also made investments with funds transferred from the 703 Account to certain brokerage accounts held by BLMIS or Madoff for BLMIS's cash management purposes. The "Other Transactions" section of the summary of activity in the 703 Account attached as

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<sup>32</sup> See *Exhibit 17*.

**Exhibit 4** includes line items for other incoming and outgoing wires and other incoming and outgoing checks. **Exhibit 13**, which is a schedule detailing these other incoming and outgoing wires and other incoming and outgoing checks, shows that a significant portion of this other activity relates to transfers to and from the 703 Account and eight brokerage accounts held by BLMIS or Madoff at various financial institutions (the “8 Brokerage Accounts”).

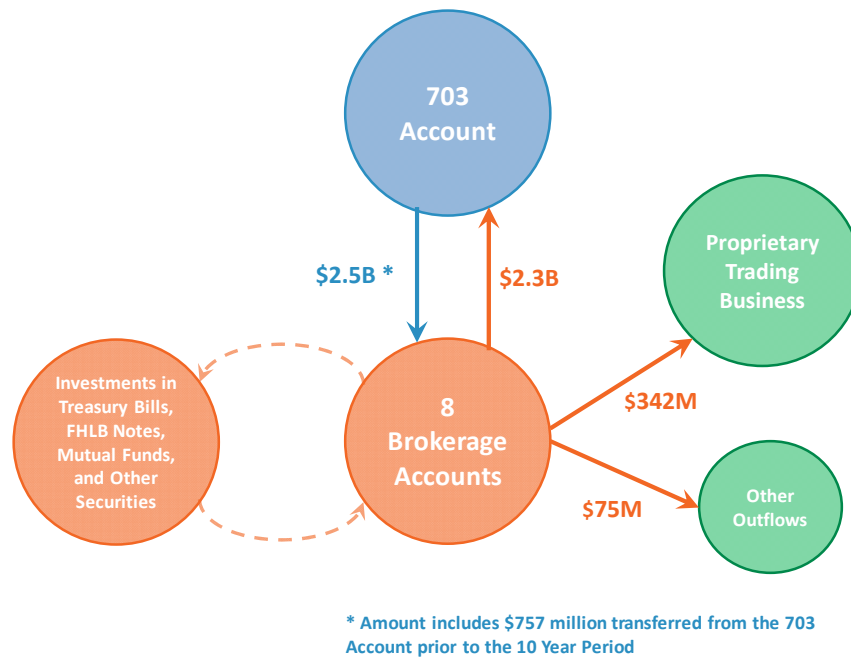
57. The 8 Brokerage Accounts, which, as further discussed below, were used by BLMIS for cash management purposes, received funds solely from the 703 Account and invested these funds primarily in money market funds, Treasury Bills, and other low-risk, US government securities.<sup>33</sup> The 8 Brokerage Accounts transferred funds back to the 703 Account, as well as to the Proprietary Trading Business.<sup>34</sup> **Figure 6** below is a flowchart of the activity in the 8 Brokerage Accounts:

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<sup>33</sup> See also trial testimony of Frank DiPascali, 4961:22 – 4962:9.

<sup>34</sup> I identified instances where the transfers from certain of the 8 Brokerage Accounts to the Proprietary Trading Business equaled the interest earned in the brokerage account from which the transfer to the Proprietary Trading Business was made. For example, on November 26, 2004, there were two transfers from one of the 8 Brokerage Accounts (the Bear Stearns 698 Account) to the Proprietary Trading Business (BONY 621 Account) totaling \$13,805,109. Available handwritten notes from BLMIS’s records reference “\$13,805,108.64 from Bear on Friday 11/26,” and a supporting calculation of this total amount includes “Interest for 2004 from BEST T-B Acct” of \$8,277,708 “thru Nov.” This exact amount appears on the monthly account statement for the Bear Stearns 698 Account for the period ending October 29, 2004 as Year to Date income on government securities. See PUBLIC-USAO\_1013122; PUBLIC-USAO\_0960238; BSTSAC0000162.

**Figure 6**  
**Flowchart of Activity in 8 Brokerage Accounts**



58. **Exhibit 14** is a summary chart of the 8 Brokerage Accounts and **Exhibit 15.1 – Exhibit 15.8** contain the detailed activity in each of the 8 Brokerage Accounts. These exhibits identify the types of securities held in each of the 8 Brokerage Accounts, including various types of US government securities, which are unlike the equity securities purportedly held in the BLMIS customer accounts.

59. To further support that the 8 Brokerage Accounts were used for cash management purposes by BLMIS, I analyzed the timing of the transfers between the 703 Account and the 8 Brokerage Accounts. Based on this analysis, I found that transfers were made *from* the 703 Account to the 8 Brokerage Accounts when the combined 703 Account and short-term investments balance was increasing. For example, as of the end of November 1999, the combined 703 Account and short-term investments balance had increased to over \$1 billion. During the next month, in December 1999, BLMIS transferred a total of \$300 million to two of



the 8 Brokerage Accounts, which, in turn, invested the funds in various government securities. See **Exhibit 15.3**, **Exhibit 15.5** and **Exhibit 17**.

60. Conversely, transfers were made *to* the 703 Account from the 8 Brokerage Accounts when the combined 703 Account and short-term investments balance was decreasing. For example, as of the end of September 2001, the combined 703 Account and short-term investments balance decreased to approximately \$100 million from close to \$500 million earlier in 2001. During the next month, in October 2001, BLMIS transferred over \$200 million to the 703 Account from two of the 8 Brokerage Accounts. See **Exhibit 15.1**, **Exhibit 15.5** and **Exhibit 17**.

61. In addition, I noted that while there were over 30,000 customer cash deposits into the 703 Account on over 2,000 different days between December 1998 and December 2008 (based on my analysis of the 703 Account described above in **Section V**), there were only 21 transfers from the 703 Account to the 8 Brokerage Accounts on only 14 different days during this same period. Further, the transfers from the 703 Account to the 8 Brokerage Accounts were made in large, round dollar denominations (*i.e.*, all but two were between \$25 million and \$150 million), and were used to purchase large quantities of money market funds and debt instruments, such as Treasury Bills and other government securities.

#### D. RESULTS OF ANALYSIS

62. Based on my analyses described above, I have concluded that the investing activity in the 703 Account and the 8 Brokerage Accounts, including purchases and sales of Treasury Bills, was for BLMIS's cash management purposes. Further, in all my analyses described above, I did not see any reference to specific BLMIS customers in transaction descriptions for the 703 Account short-term investments or activity in the 8 Brokerage Accounts, and therefore, I have also concluded that this activity was not for any particular customer account.<sup>35</sup>

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<sup>35</sup> See also trial testimony of Frank DiPascali, 4803:23 – 4804:12.



## VIII. INTEREST EARNED ON TREASURY BILLS

### A. OVERVIEW

63. I was asked to determine whether the interest earned on Treasury Bills (*i.e.*, the difference between the proceeds received and the purchase price of the Treasury Bills) purchased directly or indirectly with funds from the 703 Account was sufficient to pay BLMIS customer withdrawals. To do this, I first determined the total amount of interest earned on Treasury Bills held in the JPMC G 13414 Account and in six of the 8 Brokerage Accounts each year during the 10 Year Period. See **Exhibit 12** and **Exhibit 16**. I then compared the annual interest amounts to the total amount of BLMIS customer withdrawals each year and calculated the interest as a percentage of total customer withdrawals.

### B. RESULTS OF ANALYSIS

64. The annual interest earned on Treasury Bills held in the JPMC G 13414 Account and six of the 8 Brokerage Accounts ranged from 0% to 1% of the annual customer withdrawals during the 10 Year Period. More specifically, during 1999, there was no interest earned on Treasury Bills, while there were over \$17 billion in customer withdrawals. In 2000, there was approximately \$229,000 earned on Treasury Bills compared to over \$25 billion in customer withdrawals, representing .001%. For each year from 2001 – 2008, total annual interest on Treasury Bills ranged from \$1.8 million to \$73.2 million compared to customer withdrawals that ranged from \$3.5 *billion* to \$37.6 *billion*. **Figure 7** below is a graphical depiction of the annual comparison. See also **Exhibit 18**.



## IX. SIGNATURE AND RIGHT TO MODIFY

66. This report and the exhibits contained herein present my findings and the bases thereof. To the extent that any additional information is produced by any party, I reserve the right to incorporate such additional information into my report or to modify my report as necessary.

By:



Lisa M. Collura, CPA, CFE, CFF  
January 16, 2019

## X. LIST OF EXHIBITS

Exhibit 1: Curriculum Vitae  
Exhibit 2: Documents Considered  
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Exhibit 7: Example of a Handwritten Ledger  
Exhibit 8.1: Example of Daily Sheets Pre-November 1998  
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Exhibit 9: Example of Analysis of Handwritten Documents in 10 Year Period  
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Exhibit 13: Detail of Other Wires and Checks in/out of the 703 Account  
Exhibit 14: Summary Chart of the 8 Brokerage Accounts  
Exhibit 15.1: Bear Stearns 698 Account Activity  
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Exhibit 15.3: Lehman 398 Account Activity  
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Exhibit 16: Treasury Bill Activity in Six of the 8 Brokerage Accounts  
Exhibit 17: IA Business Monthly Cash & Investment Balances  
Exhibit 18: Interest Earned on Treasury Bills vs. Total BLMIS Customer Withdrawals

# EXHIBIT 3

**EXHIBIT 3**

**List of Known BLMIS/Madoff Bank and Brokerage Accounts**

Name on Account Statement - 1	Name on Account Statement - 2	Date of Name Change	Banking / Financial Institution <sup>[1]</sup>	Account Number	Earliest Available Statement <sup>[2]</sup>	Latest Available Statement
Bernard L Madoff Investment Securities LLC	<i>No Change</i>	<i>n/a</i>	Bank of America	xxx-x8229	Dec-06	Feb-09
Bernard L. Madoff	<i>No Change</i>	<i>n/a</i>	Bank of America	xxxx-x-x0329	Dec-98	Jun-01
Bernard L Madoff Investment Securities LLC	<i>No Change</i>	<i>n/a</i>	Bank of New York	xx4239	Mar-05	May-07
Master Trust - Master Custody Account / Bernard L Madoff	Custodian Account / Bernard L Madoff	Dec-00	Bank of New York	xx6715	Jul-99	Jun-09
Bernard L Madoff Investment Securities LLC	<i>No Change</i>	<i>n/a</i>	Bank of New York	xxx-xx0052	May-08	Dec-08
Bernard L. Madoff	<i>No Change</i>	<i>n/a</i>	Bank of New York	xxx-xxx1050	Jul-99	May-09
Bernard L Madoff / Ruth Madoff	<i>No Change</i>	<i>n/a</i>	Bank of New York	xxx-xxx2156	Jan-02	Dec-02
Bernard L Madoff Investment Securities LLC	<i>No Change</i>	<i>n/a</i>	Bank of New York	xxx-xxx2-393	Jul-99	Jan-09
Bernard L Madoff / Ruth Madoff	<i>No Change</i>	<i>n/a</i>	Bank of New York	xxxxxx2690	Dec-97	Jul-10
Bernard L Madoff	<i>No Change</i>	<i>n/a</i>	Bank of New York	xxx-xxx3-878	Jan-98	Apr-00
Bernard L Madoff Investment Securities LLC	<i>No Change</i>	<i>n/a</i>	Bank of New York	xxx-xxx4-391	May-03	Jan-09
Bernard L. Madoff	<i>No Change</i>	<i>n/a</i>	Bank of New York	xxx-xxx6-412	Jun-99	May-09
Bernard L. Madoff	Bernard L Madoff Investment Securities LLC	May-01	Bank of New York	xxx-xxx6-621	Jan-98	Jan-09
Bernard L Madoff Investment Securities LLC	<i>No Change</i>	<i>n/a</i>	Bank of New York	xxx-xxx6-918	Sep-03	Feb-09
Bernard L. Madoff	Bernard L Madoff Investment Securities LLC	May-01	Bank of New York	xxx-xxx7-065	Jun-00	Aug-07
Bernard L. Madoff	Bernard L Madoff Investment Securities LLC	May-01	Bank of New York	xxx-xxx7-826	Jan-98	Jan-09
Bernard L. Madoff	Bernard L Madoff Investment Securities LLC	May-01	Bank of New York	xxx-xxx9-934	Jan-98	Jan-09
Bernard L Madoff Securities LLC	<i>No Change</i>	<i>n/a</i>	Bank of New York / Pershing LLC (Imperial Capital)	xxx-xx7646	Apr-08	Dec-08
Bernard L Madoff Securities	<i>No Change</i>	<i>n/a</i>	Bank of New York / Pershing LLC (Janco Partners Inc)	xxx-xx2296	Mar-05	Dec-08
Bernard L. Madoff	<i>No Change</i>	<i>n/a</i>	Bank of New York / Pershing LLC (Link Brokers Derivatives Corporation)	xxx-xx1141	Oct-08	Dec-08
Bernard L Madoff Inv Sec LLC c/o Bernard L Madoff Inv Sec LLC	<i>No Change</i>	<i>n/a</i>	Bank of New York / Pershing LLC (Merriman Curhan Ford)	xxx-xx0425	Dec-07	Dec-08
Bernard L Madoff Inv Sec LLC c/o Bernard L Madoff Inv Sec L	<i>No Change</i>	<i>n/a</i>	Bank of New York / Pershing LLC (Merriman Curhan Ford)	xxx-xx3028	Jun-06	Sep-08
Bernard L Madoff Inv Sec LLC c/o Bernard L Madoff Inv Sec LLC	<i>No Change</i>	<i>n/a</i>	Bank of New York / Pershing LLC (Merriman Curhan Ford)	xxx-xx5612	Aug-08	Sep-08
Bernard L Madoff Investment Securities LLC	<i>No Change</i>	<i>n/a</i>	Bank of New York / Pershing LLC (Pali Capital Inc)	xxx-xx5078	Mar-08	Dec-08
Bernard L Madoff	<i>No Change</i>	<i>n/a</i>	Bank of Tokyo	xxx-xx0025	Nov-98	Dec-98
Bernard L. Madoff	<i>No Change</i>	<i>n/a</i>	Bankers Trust Company	xx-xx0-417	Dec-98	Jan-01
Bernard L. Madoff	<i>No Change</i>	<i>n/a</i>	Bankers Trust Company	xx-xx0-599	Dec-98	Jul-00
Madoff, Bernard L.	<i>No Change</i>	<i>n/a</i>	Banque Nationale de Paris	xxx-xxxxxx-xxx-x00-47	Nov-98	Mar-00
Bernard L. Madoff Inv Sec LLC	<i>No Change</i>	<i>n/a</i>	Barclays / Lehman	xxx1370	May-07	Aug-08
Bernard L. Madoff	<i>No Change</i>	<i>n/a</i>	Barclays / Lehman	xxx8820	Sep-04	Dec-05
Bernard L Madoff Inv Sec	<i>No Change</i>	<i>n/a</i>	Barclays / Lehman	xxx-x1151	Dec-06	Feb-07
Bernard L Madoff Inv Sec	<i>No Change</i>	<i>n/a</i>	Barclays / Lehman	xxx-x1172	Feb-05	Jun-07
Bernard L Madoff Inv Sec	<i>No Change</i>	<i>n/a</i>	Barclays / Lehman	xxx-x1574	Dec-06	Dec-06
Bernard L Madoff Inv Sec	<i>No Change</i>	<i>n/a</i>	Barclays / Lehman	xxx-x3646	Oct-06	Nov-07
Bernard L Madoff Inv Sec	<i>No Change</i>	<i>n/a</i>	Barclays / Lehman	xxx-x3680	Jul-07	Jul-08
Bernard L Madoff Investment Securities LLC	<i>No Change</i>	<i>n/a</i>	Barclays / Lehman	xxx-x4435	May-07	Nov-08
Bernard L. Madoff	<i>No Change</i>	<i>n/a</i>	Barclays / Lehman	xxx-x6152	Jun-03	May-06
Bernard L Madoff Inv Sec	<i>No Change</i>	<i>n/a</i>	Barclays / Lehman	xxx-x7981	Feb-07	May-07
Bernard L Madoff Inv Sec	<i>No Change</i>	<i>n/a</i>	Barclays / Lehman	xxx-x8624	Jan-07	Mar-07
Bernard L. Madoff	<i>No Change</i>	<i>n/a</i>	Barclays / Lehman	xxx-x4398	Jan-00	Nov-08
Mr ou Mme Bernard Madoff	<i>No Change</i>	<i>n/a</i>	Barclays Bank PLC	xxxxxx x 01 01	Dec-03	Nov-08
Bernard L Madoff Investment Securities LLC	<i>No Change</i>	<i>n/a</i>	Bear Stearns	xxx-xxxx1 418	May-05	Sep-08
Bernard L Madoff Investment Securities LLC	<i>No Change</i>	<i>n/a</i>	Bear Stearns	xxx-xxxx1 JJ4	May-05	Mar-08
Bernard L. Madoff	Bernard L Madoff Investment Securities LLC	May-04	Bear Stearns	xxx-x2698	Jun-98	Apr-06
Bernard Madoff Securities LLC	<i>No Change</i>	<i>n/a</i>	Bear Stearns Securities Corp (American Technology Research)	xxx-xxxx9 999	May-07	Dec-08

**EXHIBIT 3**

**List of Known BLMIS/Madoff Bank and Brokerage Accounts**

Name on Account Statement - 1	Name on Account Statement - 2	Date of Name Change	Banking / Financial Institution <sup>[1]</sup>	Account Number	Earliest Available Statement <sup>[2]</sup>	Latest Available Statement
Bernard L Madoff Investment Securities LLC	No Change	n/a	Bear Stearns Securities Corp (Cohmad Securities Corp)	xxx-xxxx1 018	May-01	Feb-06
Madoff Investment Securities FAO Madoff Inv Securities	No Change	n/a	Bear Stearns Securities Corp (Friedman, Billings Ramsey & Co)	xxx-xxxx2 R55	Apr-06	Mar-08
Madoff Investment	No Change	n/a	Bear Stearns Securities Corp (Gabelli & Company Inc)	xxx-xxxx7 125	Apr-08	Sep-08
Bernard L Madoff Sec LLC	No Change	n/a	Bear Stearns Securities Corp (Johnson Rice & Co LLC)	xxx-x3396	May-05	Dec-07
Bernard L Madoff Investment Securities LLC	No Change	n/a	Bear Stearns Securities Corp (Miller Tabak + Co LLC)	xxx-xxxx8 976	Jun-05	Sep-08
Bernard L Madoff	No Change	n/a	Bear Stearns Securities Corp (Miller Tabak Roberts Securities LLC)	xxx-xxxx7 S10	Jan-07	Dec-08
Bernard L Madoff Investment Securities LLC	No Change	n/a	Bear Stearns Securities Corp (Needham & Company LLC)	xxx-xxxx3 605	Jul-07	Mar-08
Bernard L Madoff Investments Securities LLC	No Change	n/a	Bear Stearns Securities Corp (Order Execution Services LLC)	xxx-xxxx6 001	Jan-05	Jan-07
Bernard L Madoff Investment Securities LLC	No Change	n/a	Bear Stearns Securities Corp (Pali Capital Inc)	xxx-xxxx6 400	Jan-07	Mar-08
Bernard L Madoff Investment	No Change	n/a	CIBC	xxx-x0217	Dec-08	Apr-09
Bernard L Madoff Investment Securities LLC	No Change	n/a	CIBC	xxxxxx0626	Dec-05	Dec-05
Bernard L Madoff Investment Securities LLC	No Change	n/a	CIBC	xxxxxx7326	Dec-05	Dec-05
Bernard L Madoff Investment Securities LLC	No Change	n/a	Citi Smith Barney	xxx-xxx31-12	Apr-06	Aug-08
Bernard L. Madoff	No Change	n/a	Citigroup	xxx-xxx46-11	Aug-99	Sep-08
Bernard L. Madoff	No Change	n/a	Commerce Bank NA / TD Bank NA	xxx-xx0814	Dec-08	Dec-08
Bernard L Madoff Investment Securities LLC	No Change	n/a	Credit Suisse	xG8DD	Feb-05	Dec-08
Bernard L Madoff Investment Securities LLC	No Change	n/a	Credit Suisse	xxx-xx9386	Apr-08	May-09
Bernard L. Madoff Investment Securities	No Change	n/a	Fidelity	xxx-xx0027	May-05	May-05
B L Madoff Investment Sec	No Change	n/a	Fidelity	xxx-xx2622	Nov-92	Jan-09
Bernard L Madoff Investment Securities	No Change	n/a	Fidelity	xxx-xx6507	May-93	Jul-94
Bernard L. Madoff	No Change	n/a	Fidelity	xxx-xx9043	Aug-98	May-09
Madoff Investment Securities FAO Bernard L Madoff	No Change	n/a	Fidelity / National Financial Services (Batenkill Capital)	xxx-xx0150	Jan-05	Sep-05
Bernard L Madoff Invst Secs	Bernard L. Madoff Invst Sec / Broker Dealer A/C	Oct-05	Fidelity / National Financial Services (Gordon Haskett Capital Corp)	xxx-xx7532	Mar-05	Mar-07
Bernard L Madoff Invst Secs LLC / Madoff	No Change	n/a	Fidelity / National Financial Services (Kaufman Brothers LP)	xxx-xx0425	Oct-08	Nov-08
Bernard Madoff Invst Secs LLC	No Change	n/a	Fidelity / National Financial Services (Ladenburg Thalmann & Co Inc)	xxx-xx1185	Jan-08	Jan-08
Bernard L Madoff Securities	No Change	n/a	Fidelity / National Financial Services (Thomas Weisel Partners)	xxx-xx7520	May-06	Nov-08
Madoff	Broker Dealer Crd Acct Madoff	Oct-05	Fidelity / National Financial Services (Tradetrek Securities)	xxx-xx2437	Jun-05	Apr-08
Bernard L Madoff Inv Sec LLC	No Change	n/a	Jeffries & Co (Merriman Curhan Ford)	xxx-x8302	Mar-06	Jun-06
Bernard Madoff Securities	No Change	n/a	Fox-Pitt, Kelton	xxx-xx1904	Jul-08	Aug-08
Bernard L. Madoff Investment Securities	No Change	n/a	JPMorgan Chase	x x3414	Apr-02	Dec-08
Bernard L. Madoff	Bernard L. Madoff Investment Securities	Sep-02	JPMorgan Chase	x x4276	Apr-98	May-01
Bernard L. Madoff	No Change	n/a	JPMorgan Chase	x x0686	Dec-92	May-98
Bernard L. Madoff Investment Securities	No Change	n/a	JPMorgan Chase	xxxx9466	Sep-07	Feb-09
Bernard L. Madoff	No Change	n/a	JPMorgan Chase	xxx-xx0700	Dec-98	Apr-02
Bernard L. Madoff	No Change	n/a	JPMorgan Chase	xxx-xx1535	Dec-98	Apr-02
Bernard L. Madoff	No Change	n/a	JPMorgan Chase	xxx-xx1543	Dec-98	Apr-02
Bernard L. Madoff	Bernard L. Madoff Investment Securities	Sep-02	JPMorgan Chase	xxxxx1703	Dec-98	Mar-09
Bernard Madoff / Ruth Madoff	No Change	n/a	JPMorgan Chase	xxxxxxx8765	Dec-01	Nov-08
Bernard L Madoff	Bernard L Madoff Investment Securities	Sep-02	JPMorgan Chase	xxxxxxxx1509	Dec-98	Mar-09
Bernard L. Madoff - Expense	No Change	n/a	JPMorgan Chase	xxxx-xxxxx7-509	Dec-98	Feb-01

**EXHIBIT 3**

**List of Known BLMIS/Madoff Bank and Brokerage Accounts**

Name on Account Statement - 1	Name on Account Statement - 2	Date of Name Change	Banking / Financial Institution <sup>[1]</sup>	Account Number	Earliest Available Statement <sup>[2]</sup>	Latest Available Statement
Bernard L. Madoff Investment Securities	<i>No Change</i>	<i>n/a</i>	JPMorgan Securities, Inc	xxx-xx4332	Mar-07	Nov-08
Bernard L Madoff Investment Securities LLC	<i>No Change</i>	<i>n/a</i>	M & T Securities	xxx-xx4039	May-07	Mar-09
Bernard L Madoff Inv Secs / Bernard L Madoff Invest Secur	<i>No Change</i>	<i>n/a</i>	Merrill Lynch	xxx-x5U55	Oct-05	Dec-07
Bernard L Madoff Inv Secs / Bernard L Madoff Invest Secur	<i>No Change</i>	<i>n/a</i>	Merrill Lynch	xxx-x5U55	Jul-08	Nov-08
Bernard L. Madoff	<i>No Change</i>	<i>n/a</i>	Morgan Stanley	xxx xx0719	Dec-99	Jul-09
Bernard L. Madoff Investment Secs	<i>No Change</i>	<i>n/a</i>	Paribas	xxx-xxxxxx-xxx-xx21-01	Nov-98	Apr-00
Bernard L Madoff Inv Sec LLC	<i>No Change</i>	<i>n/a</i>	Raymond James	xxxx3532	Nov-08	Dec-08
Bernard L Madoff Investment Securities	<i>No Change</i>	<i>n/a</i>	UBS Financial Services (previously held at ABN AMRO & The Chicago Corporation)	x xx x0733	Mar-93	Nov-08
Bernard L Madoff Securities LLC	<i>No Change</i>	<i>n/a</i>	UBS Financial Services	xx xxx18 CG	Jan-05	Nov-08
Bernard L Madoff Investment Securities	<i>No Change</i>	<i>n/a</i>	Wachovia Capital Markets	xxxx4607	Jan-08	Dec-08
Bernard L Madoff Investment Securities	<i>No Change</i>	<i>n/a</i>	Wall St Access	xxx-xx1975	Apr-07	Dec-08
Bernard L Madoff Investment Securities LLC	<i>No Change</i>	<i>n/a</i>	Wall St Access	xxx-xx6906	Jun-07	Nov-07

<sup>[1]</sup> The names in parentheses represent the financial advisor or broker-dealer associated with the listed account.

<sup>[2]</sup> This date is based on the date of the earliest available account statement. For some accounts, there may be non-statement documents related to the account that are dated earlier than the first available statement.



# EXHIBIT 12

Treasury Bill Activity in JPMC G 13414 Account - Purchases, Sales/Redemptions, and Interest

Purchases of Treasury Bills						Sales/Redemptions of Treasury Bills					
CUSIP	Maturity Date	703 ID(s) <sup>[1]</sup>	Purchase Date(s)	Total Face Value Purchased	Total Purchase Price	703 ID(s) <sup>[1]</sup>	Sale/Redemption Date(s)	Total Face Value Sold/Redeemed	Proceeds From Sale/Redemption	Interest (Proceeds Less Purchase Price)	Redeemed or Sold Prior to Maturity
912795ZL8	6/14/2007	41739	3/13/2007 3/14/2007 3/15/2007	\$ 300,000,000	\$ 296,235,125	43075	6/14/2007	\$ 300,000,000	\$ 300,000,000	\$ 3,764,875	Redeemed
		41758									
		41759									
		41760									
		41761									
		41762									
912795ZM6	6/21/2007	41781	3/15/2007	\$ 300,000,000	\$ 296,035,083	43171	6/21/2007	\$ 300,000,000	\$ 300,000,000	\$ 3,964,917	Redeemed
		41782									
		41783									
		41784									
		41785									
		41786									
912795ZU8	8/9/2007	42596	5/9/2007	\$ 300,000,000	\$ 296,373,667	43844	8/9/2007	\$ 300,000,000	\$ 300,000,000	\$ 3,626,333	Redeemed
		42597									
		42598									
		42599									
		42600									
		42601									
912795ZZ7	9/13/2007	43082	6/14/2007	\$ 300,000,000	\$ 296,572,333	44295	9/13/2007	\$ 300,000,000	\$ 300,000,000	\$ 3,427,667	Redeemed
		43083									
		43084									
		43085									
		43086									
		43087									
912795A27	9/20/2007	43188	6/21/2007	\$ 300,000,000	\$ 296,534,417	44371	9/20/2007	\$ 300,000,000	\$ 300,000,000	\$ 3,465,583	Redeemed
		43189									
		43190									
		43191									
		43192									
		43193									
912795A68	10/18/2007	43624	7/24/2007 8/9/2007	\$ 300,000,000	\$ 296,872,625	44740	10/18/2007	\$ 300,000,000	\$ 300,000,000	\$ 3,127,375	Redeemed
		43625									
		43626									
		43853									
		43854									
		43855									
912795A76	10/25/2007	43621	7/24/2007 8/9/2007	\$ 300,000,000	\$ 296,597,302	44825	10/25/2007	\$ 300,000,000	\$ 300,000,000	\$ 3,402,698	Redeemed
		43622									
		43623									
		43856									
		43857									
		43858									
912795A92	11/8/2007	43934	8/15/2007	\$ 200,000,000	\$ 197,908,056	45008	11/8/2007	\$ 200,000,000	\$ 200,000,000	\$ 2,091,944	Redeemed
		43935									
		43936									
		43937									
		43956									
		43957									
912795B26	11/15/2007	43958	8/16/2007	\$ 300,000,000	\$ 296,724,000	45071	11/15/2007	\$ 300,000,000	\$ 300,000,000	\$ 3,276,000	Redeemed
		43959									
		43960									
		43961									
		44389									
		44390									
912795B59	12/6/2007	44391	9/20/2007	\$ 300,000,000	\$ 297,542,417	45346	12/6/2007	\$ 300,000,000	\$ 300,000,000	\$ 2,457,583	Redeemed
		44392									
		44393									
		44394									
		44316									
		44317									
912795B67	12/13/2007	44318	9/13/2007	\$ 300,000,000	\$ 297,027,333	45450	12/13/2007	\$ 300,000,000	\$ 300,000,000	\$ 2,972,667	Redeemed
		44319									
		44320									
		44321									
		43820									
		43821									
912795B75	12/20/2007	43822	8/7/2007	\$ 300,000,000	\$ 294,763,125	45574	12/20/2007	\$ 300,000,000	\$ 300,000,000	\$ 5,236,875	Redeemed
		43823									
		43824									
		43825									

Treasury Bill Activity in JPMC G 13414 Account - Purchases, Sales/Redemptions, and Interest

Purchases of Treasury Bills						Sales/Redemptions of Treasury Bills					
CUSIP	Maturity Date	703 ID(s) <sup>[1]</sup>	Purchase Date(s)	Total Face Value Purchased	Total Purchase Price	703 ID(s) <sup>[1]</sup>	Sale/Redemption Date(s)	Total Face Value Sold/Redeemed	Proceeds From Sale/Redemption	Interest (Proceeds Less Purchase Price)	Redeemed or Sold Prior to Maturity
912795C33	1/17/2008	44756	10/18/2007	\$ 300,000,000	\$ 296,943,917	46063	1/17/2008	\$ 300,000,000	\$ 300,000,000	\$ 3,056,083	Redeemed
		44757									
		44758									
		44759									
		44760									
912795C41	1/24/2008	44761	10/25/2007	\$ 300,000,000	\$ 297,050,083	46172	1/24/2008	\$ 300,000,000	\$ 300,000,000	\$ 2,949,917	Redeemed
		44842									
		44843									
		44844									
		44845									
912795C58	1/31/2008	44846	11/1/2007	\$ 300,000,000	\$ 297,103,167	46263	1/31/2008	\$ 300,000,000	\$ 300,000,000	\$ 2,896,833	Redeemed
		44847									
		44936									
		44937									
		44938									
912795C66	2/7/2008	44939	11/8/2007	\$ 200,000,000	\$ 198,159,778	46263	1/31/2008	\$ 300,000,000	\$ 300,000,000	\$ 2,896,833	Redeemed
		44940									
		44941									
		45022									
		45023									
912795C90	2/28/2008	45024	11/8/2007	\$ 200,000,000	\$ 198,159,778	46440	2/7/2008	\$ 200,000,000	\$ 200,000,000	\$ 1,840,222	Redeemed
		45025									
		45368									
		45369									
		45370									
912795D32	3/13/2008	45371	12/6/2007	\$ 300,000,000	\$ 297,921,000	46691	2/28/2008	\$ 300,000,000	\$ 300,000,000	\$ 2,079,000	Redeemed
		45372									
		45373									
		45087									
		45088									
912795D40	3/20/2008	45089	11/15/2007	\$ 300,000,000	\$ 296,725,021	46899	3/13/2008	\$ 300,000,000	\$ 300,000,000	\$ 3,274,979	Redeemed
		45090									
		45091									
		45092									
		45422									
912795D57	3/27/2008	45423	12/11/2007	\$ 300,000,000	\$ 297,608,333	47003	3/20/2008	\$ 300,000,000	\$ 300,000,000	\$ 2,391,667	Redeemed
		45424									
		45425									
		45426									
		45427									
912795D65	4/3/2008	45445	12/12/2007	\$ 200,000,000	\$ 198,345,222	47091	3/27/2008	\$ 200,000,000	\$ 200,000,000	\$ 1,654,778	Redeemed
		45446									
		45447									
		45448									
		45464									
912795D73	4/10/2008	45465	12/13/2007	\$ 300,000,000	\$ 297,312,000	47262	4/3/2008	\$ 300,000,000	\$ 300,000,000	\$ 2,688,000	Redeemed
		45466									
		45467									
		45468									
		45469									
912795D81	4/17/2008	45594	12/20/2007	\$ 300,000,000	\$ 297,312,000	47369	4/10/2008	\$ 300,000,000	\$ 300,000,000	\$ 2,688,000	Redeemed
		45595									
		45596									
		45597									
		45598									
912795D99	4/24/2008	45599	1/17/2008	\$ 300,000,000	\$ 297,679,500	47483	4/17/2008	\$ 300,000,000	\$ 300,000,000	\$ 2,320,500	Redeemed
		46091									
		46092									
		46093									
		46094									
912795E23	5/1/2008	46095	1/24/2008	\$ 300,000,000	\$ 298,506,083	47579	4/24/2008	\$ 300,000,000	\$ 300,000,000	\$ 1,493,917	Redeemed
		46096									
		46191									
		46192									
		46193									
		46194	1/31/2008	\$ 300,000,000	\$ 298,316,500	47666	5/1/2008	\$ 300,000,000	\$ 300,000,000	\$ 1,683,500	Redeemed
		46195									
		46196									
		46342									
		46343									

Treasury Bill Activity in JPMC G 13414 Account - Purchases, Sales/Redemptions, and Interest

Purchases of Treasury Bills						Sales/Redemptions of Treasury Bills					
CUSIP	Maturity Date	703 ID(s) <sup>[1]</sup>	Purchase Date(s)	Total Face Value Purchased	Total Purchase Price	703 ID(s) <sup>[1]</sup>	Sale/Redemption Date(s)	Total Face Value Sold/Redeemed	Proceeds From Sale/Redemption	Interest (Proceeds Less Purchase Price)	Redeemed or Sold Prior to Maturity
912795E31	5/8/2008	46455 46456 46457 46458	2/7/2008	\$ 200,000,000	\$ 198,958,556	47773	5/8/2008	\$ 200,000,000	\$ 200,000,000	\$ 1,041,444	Redeemed
912795E64	5/29/2008	46704 46705 46706 46707 46708 46709	2/28/2008	\$ 300,000,000	\$ 298,498,500	48026	5/29/2008	\$ 300,000,000	\$ 300,000,000	\$ 1,501,500	Redeemed
912795E80	6/12/2008	46911 46912 46913 46914 46915 46916	3/13/2008	\$ 300,000,000	\$ 298,915,583	48260	6/12/2008	\$ 300,000,000	\$ 300,000,000	\$ 1,084,417	Redeemed
912795E98	6/19/2008	47021 47022 47023 47024 47025 47026	3/20/2008	\$ 300,000,000	\$ 299,393,333	48362	6/19/2008	\$ 300,000,000	\$ 300,000,000	\$ 606,667	Redeemed
912795F22	6/26/2008	47106 47107 47108 47109	3/27/2008	\$ 200,000,000	\$ 199,357,944	48465	6/26/2008	\$ 200,000,000	\$ 200,000,000	\$ 642,056	Redeemed
912795F30	7/3/2008	47285 47286 47287 47288 47289 47290	4/3/2008	\$ 300,000,000	\$ 298,976,250	48586	7/3/2008	\$ 300,000,000	\$ 300,000,000	\$ 1,023,750	Redeemed
912795F48	7/10/2008	47389 47390 47391 47392 47393 47394	4/10/2008	\$ 300,000,000	\$ 299,021,750	48680	7/10/2008	\$ 300,000,000	\$ 300,000,000	\$ 978,250	Redeemed
912795F55	7/17/2008	47508 47509 47510 47511 47512 47513	4/17/2008	\$ 300,000,000	\$ 299,207,542	48783	7/17/2008	\$ 300,000,000	\$ 300,000,000	\$ 792,458	Redeemed
912795F63	7/24/2008	47593 47594 47595 47596 47597 47598	4/24/2008	\$ 300,000,000	\$ 299,105,167	48886	7/24/2008	\$ 300,000,000	\$ 300,000,000	\$ 894,833	Redeemed
912795F71	7/31/2008	47688 47689 47690 47691 47692 47693	5/1/2008	\$ 300,000,000	\$ 298,953,500	48976	7/31/2008	\$ 300,000,000	\$ 300,000,000	\$ 1,046,500	Redeemed
912795F89	8/7/2008	47787 47788 47789 47790	5/8/2008	\$ 200,000,000	\$ 199,198,694	49091	8/7/2008	\$ 200,000,000	\$ 200,000,000	\$ 801,306	Redeemed
912795G39	8/28/2008	48046 48047 48048 48049 48050 48051	5/29/2008	\$ 300,000,000	\$ 298,589,500	49353	8/28/2008	\$ 300,000,000	\$ 300,000,000	\$ 1,410,500	Redeemed

Treasury Bill Activity in JPMC G 13414 Account - Purchases, Sales/Redemptions, and Interest

Purchases of Treasury Bills						Sales/Redemptions of Treasury Bills					
CUSIP	Maturity Date	703 ID(s) <sup>[1]</sup>	Purchase Date(s)	Total Face Value Purchased	Total Purchase Price	703 ID(s) <sup>[1]</sup>	Sale/Redemption Date(s)	Total Face Value Sold/Redeemed	Proceeds From Sale/Redemption	Interest (Proceeds Less Purchase Price)	Redeemed or Sold Prior to Maturity
912795G54	9/11/2008	47822	5/12/2008 6/12/2008	\$ 600,000,000	\$ 596,997,125	49592	9/11/2008	\$ 600,000,000	\$ 600,000,000	\$ 3,002,875	Redeemed
		47823									
		47824									
		47825									
		47826									
		47827									
		48282									
		48283									
		48284									
		48285									
912795G62	9/18/2008	48286	5/12/2008 6/19/2008	\$ 500,000,000	\$ 497,410,417	49706	9/18/2008	\$ 500,000,000	\$ 500,000,000	\$ 2,589,583	Redeemed
		48287									
		47828									
		47829									
		47830									
		47831									
		48377									
		48378									
		48379									
		48380									
912795G70	9/25/2008	48381	6/26/2008	\$ 200,000,000	\$ 199,107,694	49816	9/25/2008	\$ 200,000,000	\$ 200,000,000	\$ 892,306	Redeemed
		48382									
		48480									
		48481									
		48482									
912795G88	10/2/2008	48483	7/3/2008	\$ 300,000,000	\$ 298,638,792	49940	10/2/2008	\$ 300,000,000	\$ 300,000,000	\$ 1,361,208	Redeemed
		48605									
		48606									
		48607									
		48608									
912795G96	10/9/2008	48609	7/10/2008	\$ 300,000,000	\$ 298,635,000	49965	10/3/2008	\$ 300,000,000	\$ 299,995,000	\$ 1,360,000	Sold
		48699									
		48700									
		48701									
		48702									
912795H20	10/16/2008	48703	7/17/2008	\$ 300,000,000	\$ 298,987,625	49966	10/14/2008	\$ 300,000,000	\$ 299,992,000	\$ 1,004,375	Sold
		48704									
		48800									
		48801									
		48802									
912795H38	10/23/2008	48803	7/24/2008	\$ 300,000,000	\$ 298,900,417	50097	10/16/2008	\$ 300,000,000	\$ 299,994,167	\$ 1,093,750	Sold
		48804									
		48907									
		48908									
		48909									
912795H46	10/30/2008	48910	7/31/2008	\$ 300,000,000	\$ 298,748,750	50098	10/22/2008	\$ 300,000,000	\$ 299,972,000	\$ 1,223,250	Sold
		48911									
		48912									
		49002									
		49003									
912795H53	11/6/2008	49004	8/7/2008 9/18/2008	\$ 300,000,000	\$ 298,743,694	50099	10/29/2008	\$ 300,000,000	\$ 299,983,333	\$ 1,239,639	Sold
		49005									
		49006									
		49007									
		N/A <sup>[2]</sup>									
912795H95	12/4/2008	49114	8/28/2008	\$ 300,000,000	\$ 298,685,167	50100	10/29/2008	\$ 300,000,000	\$ 299,895,000	\$ 1,209,833	Sold
		49369									
		49370									
		49371									
		49372									
912795J28	12/11/2008	49373	9/11/2008	\$ 300,000,000	\$ 298,763,917	50101	10/29/2008 11/4/2008	\$ 300,000,000	\$ 299,879,056	\$ 1,115,139	Sold
		49374									
		49610									
		49611									
		49612									
		49613				50102					
		49614									
		49615									

## Treasury Bill Activity in JPMC G 13414 Account - Purchases, Sales/Redemptions, and Interest

Purchases of Treasury Bills						Sales/Redemptions of Treasury Bills					
CUSIP	Maturity Date	703 ID(s) <sup>[1]</sup>	Purchase Date(s)	Total Face Value Purchased	Total Purchase Price	703 ID(s) <sup>[1]</sup>	Sale/Redemption Date(s)	Total Face Value Sold/Redeemed	Proceeds From Sale/Redemption	Interest (Proceeds Less Purchase Price)	Redeemed or Sold Prior to Maturity
912795J36	12/18/2008	50364 50365	10/29/2008	\$ 100,000,000	\$ 99,950,000	50462 50463	11/4/2008	\$ 100,000,000	\$ 99,953,556	\$ 3,556	Sold
912795J69	1/8/2009	48827 48828 48829 48830 48863	7/18/2008 7/22/2008	\$ 250,000,000	\$ 247,892,708	50345 50346 50347 50466 50467	10/29/2008 11/4/2008	\$ 250,000,000	\$ 249,758,500	\$ 1,865,792	Sold
912795J77	1/15/2009	48849 48850 48851 48864 48865	7/21/2008 7/22/2008	\$ 250,000,000	\$ 247,743,000	50348 50349 50350 50468 50469	10/29/2008 11/4/2008	\$ 250,000,000	\$ 249,720,250	\$ 1,977,250	Sold
912795J85	1/22/2009	50366 50367	10/29/2008	\$ 100,000,000	\$ 99,853,611	50470 50471	11/4/2008	\$ 100,000,000	\$ 99,894,667	\$ 41,056	Sold
912795J93	1/29/2009	50368 50369	10/29/2008	\$ 100,000,000	\$ 99,813,444	50472 50473	11/4/2008	\$ 100,000,000	\$ 99,885,333	\$ 71,889	Sold
912795K26	2/5/2009	49616 49617 49618 49619 49620 49621	9/11/2008	\$ 300,000,000	\$ 297,960,375	50418 50419 50420 50421 50517 50518	11/3/2008 11/5/2008	\$ 300,000,000	\$ 299,595,556	\$ 1,635,181	Sold
912795K34	2/12/2009	49833 49834 49835 49836	9/25/2008	\$ 200,000,000	\$ 198,958,667	50474 50475 50519 50520	11/4/2008 11/5/2008	\$ 200,000,000	\$ 199,690,333	\$ 731,667	Sold
912795K42	2/19/2009	49725 49726 49727 49728 49729 49730 49731 49771 49772 49773	9/18/2008 9/22/2008	\$ 500,000,000	\$ 497,604,444	50422 50423 50424 50425 50426 50427 50476 50477 50558 50559	11/3/2008 11/4/2008 11/10/2008	\$ 500,000,000	\$ 499,193,722	\$ 1,589,278	Sold
912795K59	2/26/2009	50370 50371	10/29/2008	\$ 100,000,000	\$ 99,766,667	50560 50561	11/10/2008	\$ 100,000,000	\$ 99,883,000	\$ 116,333	Sold
912795K67	3/5/2009	49752 49753	9/19/2008	\$ 100,000,000	\$ 99,768,056	50574 50575	11/12/2008	\$ 100,000,000	\$ 99,934,083	\$ 166,028	Sold
912795K75	3/12/2009	49852 49853 49854 49855	9/26/2008	\$ 200,000,000	\$ 198,656,000	50478 50479 50576 50577	11/4/2008 11/12/2008	\$ 200,000,000	\$ 199,657,111	\$ 1,001,111	Sold
912795K83	3/19/2009	49992 50014 50062 50063 50131 50132	10/3/2008 10/6/2008 10/8/2008 10/14/2008	\$ 300,000,000	\$ 298,320,000	50480 50481 50482 50483 50578 50579	11/4/2008 11/12/2008	\$ 300,000,000	\$ 299,353,278	\$ 1,033,278	Sold
				<u>\$ 16,700,000,000</u>	<u>\$ 16,586,249,976</u>	Total		<u>\$ 16,700,000,000</u>	<u>\$ 16,696,229,944</u>	<u>\$ 109,979,969</u>	

<sup>[1]</sup> See **Exhibit 4** for 703 Account transactions related to the Treasury Bills. See also statements titled "All Trade Activity" for the JPMC G 13414 account: JPMSAA0019992-94; JPMSAA0019996-20020; and JPMSAA0020022-77.

<sup>[2]</sup> The JPMC G 13414 Account Activity Report and the Lehman 435 Account statement for September 2008 reflect two transfers of Treasury Bills having a total face value of \$100 million from the Lehman 435 Account (one of the 8 Brokerage Accounts) to the JPMC G 13414 Account. According to the Lehman 435 Account statements, these Treasury Bills were purchased for a total of \$99,587,972 on 8/7/2008. See SECSAH0001353, SECSAH0001373, and JPMSAA0020056.

UNITED STATES BANKRUPTCY COURT  
 SOUTHERN DISTRICT OF NEW YORK

-----X  
 SECURITIES INVESTOR PROTECTION :  
 CORPORATION, :

Plaintiff, :

-against- :

BERNARD L. MADOFF INVESTMENT :  
 SECURITIES LLC, :

Defendant. :

-----X  
 In re: :

BERNARD L. MADOFF, :

Debtor. :

-----X  
 IRVING H. PICARD, trustee for the liquidation :  
 of Bernard L. Madoff Investment Securities :  
 LLC :

Plaintiff, :

-against- :

TRUST U/ART FOURTH O/W/O/ ISRAEL :  
 WILENITZ, *et al.* :

Defendants. :

Adv. Proc. No. 08-01789 (SMB)

SIPA LIQUIDATION

(Substantively Consolidated)

Adv. Proc. No. 10-04995 (SMB)

**ORDER GRANTING LEAVE TO APPEAL DISCOVERY ARBITRATOR'S**  
**JANUARY 2, 2019 ORDER**

WHEREAS, the Court entered an *Order Appointing a Discovery Arbitrator Pursuant to Bankruptcy Rule 9019(c) and General Order M-390*, dated October 4, 2016 (as amended, the “Order Appointing Arbitrator”) (ECF Adv. Proc. No. 08-1789 Doc. # 14227) appointing Frank Maas, Esq. (the “Discovery Arbitrator”) as arbitrator to resolve discovery disputes that are referred to him by the Court with the consent of the parties to the dispute;

WHEREAS, the parties to the above-referenced adversary proceeding stipulated to submit various discovery disputes to the Discovery Arbitrator, and the Court so-ordered the stipulation. (*See Stipulated Order Approving the Special Discovery Arbitrator*, dated Oct. 17, 2016 (ECF Adv. Proc. No. 10-04995 Doc. # 75).)

WHEREAS, the Discovery Arbitrator issued the *Discovery Arbitrator's Order*, docketed Jan. 2, 2019 ("January 2019 Order") (ECF Adv. Proc. No. 10-04995 Doc. # 125), which denied the Defendants' application to compel discovery.

WHEREAS, the Defendants submitted the *Letter of Helen Davis Chaitman, Esq.*, dated Jan. 16, 2019 (ECF Adv. Proc. No. 10-04995 Doc. # 126) seeking permission to appeal the January 2019 Order to this Court.

IT IS ORDERED, that the Defendants are granted leave to appeal the January 2019 Order as set forth herein; it is further

ORDERED, that the Defendants shall file a designation of items to be included in the record on appeal and a statement of issues to be presented ("Appellants' Designation and Statement") within thirty days of the date of entry of this Order; it is further

ORDERED, that the Defendants shall file a brief ("Appellants' Brief"), not to exceed forty pages, within thirty days of the date of entry of this Order; it is further

ORDERED, that the Plaintiff shall file a designation of additional items to be included in the record within fourteen days of the filing of the Appellants' Designation and Statement; it is further

ORDERED, that the Plaintiff shall file a brief ("Appellee's Brief"), not to exceed forty pages, within fourteen days of the filing of the Appellants' Brief; it is further

ORDERED, that the Defendants may file a reply brief, not to exceed twenty pages, within seven days of the filing of the Appellee's Brief; it is further

ORDERED, that, in accordance with ¶ 10 of the Order Appointing Arbitrator, legal conclusions will be reviewed *de novo* and other matters will be reviewed in accordance with standards deemed appropriate in the Court's discretion; it is further



ORDERED, that the Court may schedule oral argument to the extent necessary after the conclusion of briefing.

Dated: New York, New York  
February 15<sup>th</sup>, 2019

/s/ **STUART M. BERNSTEIN**  
STUART M. BERNSTEIN  
United States Bankruptcy Judge